In the Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-1459

UNITED STATES OF AMERICA, PETITIONER,

v.

LITTLE LAKE MISERE LAND COMPANY, INC., ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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Relevant Docket Entries

Complaint (Civil Action No. 14,588)	April 25, 1969
Complaint (Civil Action No. 14,589)	April 25, 1969
Order Dismissing Forest Oil Corporation as Defendant	July 30, 1969
Answer (Civil Action No. 14,588)	July 30, 1969
Answer (Civil Action No. 14,589)	July 30, 1969
Joint Motion for Consolidation and Order Granting Same	August 20, 1969
Stipulation of Facts	May 6, 1970
Motion for Summary Judgment filed by Defendants (Civil Action No. 14,588)	August 5, 1970
Motion for Summary Judgment filed by Defendants (Civil Action No. 14,589)	August 5, 1970
Motion for Summary Judgment filed by Plaintiff	October 5, 1970
Opinion of the District Court	March 9, 1971
Final Judgment	April 20, 1971
Notice of Appeal	June 11, 1971
Judgment of the Court of Appeals	December 30, 1971
Order granting an Extension of Time for filing a Petition for a Writ of Certiorari	March 21, 1972
Order granting an Extension of Time for filing a Petition for a Writ of Certiorari	April 20, 1972
Certiorari Granted	October 10, 1972

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAKE CHARLES DIVISION

UNITED STATES OF AMERICA,
PLAINTIFF

v.

LITTLE LAKE MISERE LAND COMPANY, INC., NORTH AMERICAN LAND COMPANY, INC. FOREST OIL COMPANY, GLADYS KELLY DUPUY, JAMES F. GAYLE, MRS. SHIRLEY GAYLE, ADMINISTRATRIX OF THE ESTATE OF W. GEDGE GAYLE, ALICE B. KELLY, NANCY WHITESIDE KELLY, TRUSTEE; KING CORPORATION, VORIS KING, STANLEY W. KEMP, ADMINISTRATOR OF THE ESTATE OF F. A. LEMIEUX, FRANK J. LEMIEUX, GRACE MUSSER ZOOK, MABLE MUSSER POTTER, IRENE MUSSER ERWIN, MORGAN MUSSER, A. W. NOLAND, JR., MRS. B. A. MOULTER, EXECUTRIX OF THE ESTATE OF A. P. PUJO, C. A. KING, II, WILLIS W. NOLAND, F. J. VINCENT, MARGARET H. HEARD, JOHN WATKINS HUBER, C. E. BRAZIL, LOUIE D. BARBE, EXECUTOR OF THE ESTATE OF A. M. BARBE, BARBE GOUDEAU, ROBERT NOLAND AND H. MOSS WATKINS,
DEFENDANTS

Civil Action No. 14,588

ACTION TO QUIET TITLE AND FOR INJUNCTIVE RELIEF

COMPLAINT

The United States of America, by Edward L. Shaheen, United States Attorney for the Western District of Louisiana, acting under authority of the Attorney General of the United States and at the request of the Secretary of the Interior, respectfully shows to the Court:

1. This is a civil action brought by the United States to quiet title and for injunctive relief, and jurisdiction of this Court is based and predicated upon 28 U.S.C. sec. 1345.

2. The defendants Little Lake Misere Land Company, Inc. and North American Land Company, Inc., are corporations organized and existing under the laws of the State of Louisiana and are domiciled in the Parish of Calcasieu, Louisiana.

3. The defendant Forest Oil Company is a corporation organized and existing under the laws of the State of New York and duly authorized to do business in the State of Louisiana.

4. The United States is the owner in fee simple, including all of the minerals and mineral rights, of the following described property, comprising approximately 2,574 acres of land situated in Cameron Parish, Louisiana:

(a) TRACT (140): In Township Thirteen (13) South, Range Six (6) West, Louisiana Meridian: All Section One (1); that part of Section 2 (2) lying East of the East right-of-way boundary of the Bell City Drainage Canal; that part of Section Eleven (11) lying East of the East right-of-way boundary of the Bell City Drainage Canal, North of Little Lake Misere, and North of the North right-of-way boundary of the Intracoastal Waterway; and, in Section Twelve (12), that part lying North of the North right-of-way boundary of the Intracoastal Waterway, and bounded as follows:

Beginning at Corner 1, the intersection of the line common to Ts. 12 and 13 S., R. 6 W., Secs. 35 and 2, with the East right-of-way boundary of the Bell City Drainage Canal; thence with part of the line common to T. 12 S., Sec. 35, and T. 13 S. Sec. 2, S. 89° 55′ E., 81.71 ch., to corner 2, common to T. 12 S., Secs. 35 and 36, and T. 13 S., Secs. 1 and 2; thence; with the line common to T. 12 S., Sec. 36, and T. 13 S., Sec. 1, S 89° 55′ E., 82.68 chains, to Corner 3, Common to Ts. 12 and 13 S., Rs. 5 and 6 W., Secs. 1, 6, 31, and 36; thence in part with the line common to R. 5 W. Sec. 6, 6W, Sec. 1, and in part with part of the line common to R. 5 W., Sec. 7, and R. 6W Sec. 12, in T. 13 S., 96.67 chains to Corner 4, in the North right-of-way boundary of the Intracoastal Waterway; thence, with the North right-of-way boundary of the Intracoastal Waterway, in part through Sec. 12 and in part through Sec. 11, R. 6W., S. 69° 55′ W. 57.28 ch.

to Corner 5; S. 69° 55′ W. 45.85 chs. to corner 6, the intersection of the North right-of-way boundary of the Intracoastal Waterway with the Northeast shore of Little Lake Misere; thence, with the meanders of the Northeast shore of Little Lake Misere, N. 45° 46′ W., 0.21 chain, (6-1); N. 84° 32′ W., 2.89 chs., (6-2); N. 11° 29′ W., 3.88 chains, (6-3); S. 77° 39′ W., 2.27 chs., (6-4) N. 62° 11′ W., 3.60 chains, (6-5); N. 83° 23′ W., 15.00 chs., (6-6) S. 60° 52′ W., 5.96 chs. (6-7); S. 55° 30′ W., 5.23 chs., to Corner 7, the intersection of the North shore of Little Lake Misere with the East right-of-way boundary of the Bell City Drainage Canal; thence, along the East right-of-way boundary of the Bell City Drainage Canal, in part through Sec. 11 and in part through Sec. 2, T. 13 S., R. 6 W., N. 33° 23′ W., 56.28 ch., to Corner 8, N. 31° 32′ W., 1.19 chs., (8-1); N. 27° 49′ W., 1.18 chs. (8-2); N. 24° 06′ W., 1.18 chs. (8-3); N. 20° 23′ W., 1.18 chs. (8-4); N. 16° 40′ W., 1.18 chs., (8-5); N. 12° 57′ W., 1.18 chs., (8-6); N. 9° 14′ W., 1.18 chs., (8-7); N. 5° 31′ W., 1.18 chs., (8-8); N. 1° 49′ W., 1.19 chs., to Corner 9; N. 0° 03′ E., 34.07 chs. to Corner 10; N. 0° 03′ E., 40.00 chs., to the place of beginning; containing one thousand eight hundred and ninety-four and sixty one-hundredths (1,894.60) acres, more or less.

(b) TRACT (140-I): In Township Thirteen (13) South, Range Six (6) West, Louisiana Meridian: That part of Sections Eleven (11), Twelve (12) and Thirteen (13) lying South of the South right-of-way boundary of the Intracoastal Waterway and North of the North shores of Little Lake Misere and Lake Misere, bounded as follows:

Beginning at Corner 1, the intersection of the line common to T. 13 S., Rs. 5 and 6 W., Secs. 13 and 18, with the North shore of Lake Misere; thence, in part along the North shore of Lake Misere, and in part with the North shore of Little Lake Misere with the meanders thereof, in part through Secs. 13, 12 and 11, T. 13 S., R. 6 W., S. 68° 16′ W., 0.38 ch., (1-1); S. 82° 27′ W., 11.88 chs., (1-2); N. 86° 09′ W., 6.76 chs., (1-3); N. 74° 49′ W., 3.07 chs., (1-4); N. 52° 36′ W., 4.17 chs., (1-5); N. 43° 30′ W., 5.39 chs., (1-6); N. 71° 01′ W., 11.17 chs., (1-7); S. 75° 30′ W., 7.27 chs., to

corner 2; North 12° 17′ W., 5.00 chs., (2-1); N. 32° 29′ W., 4.34 chs., (2-2); N. 17° 33′ W., 2.85 chs., (2-3); N. 19° 07′ E., 2.30 chs., (2-4); S. 80° 11′ W., 4.53 chs., (2-5); N. 56° 18′ W., 4.30 chs., (2-6); N. 70° 46′ W., 7.70 chs., (2-7); N. 55° 36′ W., 11.75 chs., (2-8); N. 61° 19′ W., 9.34 chs., (2-9); N. 33° 46′ W., 5.53 chs., (2-10); N. 8° 46′ W., 3.46 chs., (2-11); N. 35° 49′ W., 7.13 chs., (2-12); N. 45° 46′ W., 3.25 chs., to Corner 3, the intersection of the Northeast shore of Little Lake Misere with the South right-of-way boundary of the Intracoastal Waterway; thence, along the South right-of-way boundary of the Intracoastal Waterway, in part through Sec. 11 and in part through Sec. 12, N. 69° 55′ E., 43.66 chs., to Corner 4; N. 69° 55′ E., 55.64 chs., to Corner 5, the intersection of the South right-of-way boundary of the Intracoastal Waterway with the line common to Rs. 5 and 6 W., Secs. 7 and 12; thence, with part of the line common to Rs. 5 and 6 W., in part with part of the line common to Secs. 7 and 12 and in part with the line common to Secs. 13 and 18, S. 86.68 chs., to the place of beginning, containing four hundred ninety-four and sixty-two one-hundredths (494.62) acres, more or less.

(c) TRACT (140-II): In Township Thirteen (13) South, Range Six (6) West, Louisiana Meridian: That part of Section Two (2) lying West of the West right-of-way boundary of the Bell City Drainage Canal, and bounded as follows:

Beginning at Corner 1, common to Secs. 2, 3, 10 and 11; thence, with part of the line common to Secs. 2 and 3, N. 0° 03′ E., 0.54 ch., to Corner 2, the intersection of the line common to Secs. 2 and 3 with the West right-of-way boundary of the Bell City Drainage Canal; thence with the West right-of-way line of the Bell City Drainage Canal, S. 16° 40′ E., 0.56 ch., to Corner 3, the intersection of the West right-of-way line of the Bell City Drainage Canal with the line common to Secs. 2 and 11; thence, with part of the line common to Secs. 2 and 11, N. 89° 55′ W., 0.16 ch., to the place of beginning; containing four one-thousandths (0.004) acre, more or less.

(d) TRACT (140-III): In Township Thirteen (13) South, Range Six West, Louisiana Meridian: That

part of Section Two (2) lying between the center line and the East right-of-way boundary of the Bell City Drainage Canal; and that part of Section Eleven (11) lying between the East and West right-of-way boundaries of the Bell City Drainage Canal, and bounded as follows:

Beginning at Corner 1, common to T. 12 S., Secs. 34 and 35, and T. 13 S., Secs. 2 and 3, in the center of the Bell City Drainage Canal; thence, with part of the line common to T. 12 S., Sec. 35, and T. 13 S., Sec. 2, S. 89° 55′ E., 0.76 ch., to Corner 2, the intersection of the line common to Ts. 12 and 13 S., Secs. 35 and 2, with the East right-of-way boundary of the Bell City Drainage Canal; thence, along the East right-of-way boundary of the Bell City Drainage Canal, in part through Sec. 2 and in part through Sec. 11, S. 0° 03′ W., 40.00 chs., to Corner 3; S. 0° 03′ W., 34.07 chs., to Corner 4; S. 1° 49′ E., 1.19 chs., (4-1); S. 5° 31′ E., 1.18 chs., (4-2); S. 9° 14′ E., 1.18 chs., (4-3); S. 12° 57′ E., 1.18 chs., (4-4); S. 16° 40′ E., 1.18 chs., (4-5); S. 20° 23′ E., 1.18 chs., (4-6); S. 24° 06′ E., 1.18 chs., (4-7); S. 27° 49′ E., 1.18 chs., (4-8); S. 31° 32′ E., 1.19 chs., to Corner 5; S. 33° 23′ E., 56.28 chs., to Corner 6, the intersection of the East right-of-way boundary of the Bell City Drainage Canal with the North shore of Little Lake Misere; thence, with the Northwest shore of Little Lake Misere, crossing the mouth of the Bell City Drainage Canal, S. 56° 03′ W., 1.52 chs., to Corner 7, the intersection of the Northwest shore of Little Lake Misere with the West right-of-way boundary of the Bell City Drainage Canal; thence, along the West right-of-way boundary of the Bell City Drainage Canal, N. 33° 23′ W., 56.31 chs., to Corner 8; N. 31° 32′ W., 1.27 chs., (8-1); N. 27° 49′ W., 1.28 chs., (8-2); N. 24° 06′ W., 1.28 chs., (8-3); N. 20° 23′ W., 1.28 chs., (8-4); N. 16° 40′ W., 0.38 ch., to Corner 9, the intersection of the West right-of-way boundary of the Bell City Drainage Canal with the line common to Secs. 2 and 11; thence with part of the line common to Secs. 2 and 11, S. 89° 55′ E., 0.79 ch., to Corner 10, the intersection of the line common to Secs. 2 and 11 with the center line of the Bell City Drainage Canal; thence, along the center line of the Bell City Drainage Canal, in Sec. 2, N. 16° 40′ W., 1.10 chs., (10-1); N. 12° 57′ W.,

1.23 chs., (10-2); N. 9° 14′ W., 1.23 chs., (10-3); N. 5° 31′ W., 1.23 chs., (10-4); N. 1° 49′ W., 1.23 chs., to Corner 11, the intersection of the center line of the Bell City Drainage Canal with the line common to Secs. 2 and 3; thence, with part of the line common to Secs. 2 and 3, N. 0° 03′ E., 34.08 chs., to Corner 12, N. 0° 03′ E., 40.00 chs., to the place of beginning; containing fifteen and forty one-hundredths (15.40) acres, more or less.

(e) TRACT (140-IV): In Township Thirteen (13) South, Range Six (6) West, Louisiana Meridian: That part of Section Two (2) lying between the center line and the West right-of-way boundary line of the Bell City Drainage Canal, and bounded as follows:

Beginning at Corner 1, the intersection of the West right-of-way boundary of the Bell City Drainage Canal with the line common to Secs. 2 and 11; thence, with the West right-of-way boundary of the Bell City Drainage Canal, in Sec. 2, N. 16° 40′ W., 0.56 ch., to Corner 2, the intersection of the West right-of-way boundary of the Bell City Drainage Canal with the line common to Secs. 2 and 3; thence, with part of the line common to Secs. 2 and 3, N. 0° 03′ E., 5.38 chs., to Corner 3, the intersection of the line common to Secs. 2 and 3, with the center line of the Bell City Drainage Canal; thence, along the center line of the Bell City Drainage Canal, in Sec. 2, S. 1° 49′ E., 1.23 chs., (3-1); S. 5° 31′ E., 1.23 chs., (3-2); S. 9° 14′ E., 1.23 chs., (3-3); S. 12° 57′ E., 1.23 chs., (3-4); S. 16° 40′ E., 1.10 chs., to Corner 4, the intersection of the center line of the Bell City Drainage Canal with the line common to Secs. 2 and 11; thence, with part of the line common to Secs. 2 and 11, N. 89° 55′ W., 0.79 ch., to the place of beginning; containing 0.185 acre, more or less.

(f) TRACT (140-V): In Township Thirteen (13) South, Range Six (6) West, Louisiana Meridian: That part of fractional sections Eleven (11) and Twelve (12) included within the right of way of the Intracoastal Waterway, lying northeast of Little Lake Misere, and bounded as follows:

Beginning at Corner 1, the intersection of the northerly right-of-way boundary of the Intracoastal Waterway with the northeast shore of Little Lake Misere;

thence along the shore of Little Lake Misere crossing the Intracoastal Waterway S. 45° 46′ E., 5.05 chains to Corner 2, the intersection of the southerly right-of-way boundary of the Intracoastal Waterway with the Northeast shore of Little Lake Misere with southerly right-of-way boundary of the Intracoastal Waterway N. 69° 55′ E. 43.66 chains to Corner 3; N. 69° 55′ E. 55.64 chains to Corner 4, the intersection of the southerly right-of-way boundary of the Intracoastal Waterway with the line common to Rs. 5 and 6 W., Section 7 and fractional Section 12; thence with the line common to Section 7 and fractional Section 12, Rs. 5 and 6 W. T. 13 S., crossing the Intracoastal Waterway North, 4.84 chains to Corner 5, the intersection of the line common to Ranges 5 and 6 W., Sec. 7 and fractional Section 12, with the northerly right-of-way boundary of the Intracoastal Waterway; thence along the northerly right-of-way boundary of the Intracoastal Waterway S. 69° 55′ W., 57.28 chains to Corner 6; S. 69° 55′ W., 45.85 chains to the place of beginning, containing 46.031 acres, more or less.

(g) TRACT (140a): In Township Thirteen (13) South, Range Six (6) West, Louisiana Meridian: That part of Section Eleven (11) lying West of the West right-of-way boundary of the Bell City Drainage Canal, west of Little Lake Misere, and North of the North right-of-way boundary of the Intracoastal Waterway, and bounded as follows:

Beginning at Corner 1, common to Secs. 2, 3, 10 and 11; thence, with part of the line common to Secs. 2 and 11, S. 89° 55′ E., 0.16 Ch., to corner 2, the intersection of the line common to Secs. 2 and 11 with the West right-of-way boundary of the Bell City Drainage Canal in Sec. 11, S. 16° 40′ E., 0.38 ch., (2-1); S. 20° 23′ E., 1.28 chs., (2-2); S. 24° 06′ E., 1.28 chs., (2-3); S. 27° 49′ E., 1.28 chs., (2-4); S. 31° 32′ E., 1.27 chs., Corner 3: S. 33° 23′ E., 56.31 chs., to Corner 4, the intersection of the West right-of-way boundary line of the Bell City Drainage Canal with the Northwesterly shore of Little Lake Misere; thence, along the Northwesterly shore of Little Lake Misere with the meanders thereof, S. 11° 38′ W., 6.81 chs., (4-1); S. 4° 14′ E., 5.28 chs., (4-2);

S. 85° 09′ W., 1.62 chs., to Corner 5, the intersection of the Northwesterly shore of Little Lake Misere with the North right-of-way boundary of the Intracoastal Waterway; thence, with the North right-of-way boundary of the Intracoastal Waterway, S. 86° 13′ W., 5.20 chs., Corner 6; N. 87° 58′ W., 5.56 chs., Corner 7; N. 84° 58′ W., 20.27 chs., to Corner 8; the intersection of the North right-of-way boundary of the Intracoastal Waterway with the line common to Secs. 10 and 11; thence, with part of the line common to Secs. 10 and 11, N. 0° 03′ E., 22.34 chs. Corner 9; N. 0° 03′ E., 40.00 chs., to the place of beginning; containing 123.34 acres, more or less.

5. The property described in the previous paragraph (4) was acquired by the United States through a judgment of condemnation rendered in certain proceedings entitled *United States of America v. 2574.18 acres of land in Cameron Parish, Louisiana, Little Lake Misere Land Company, Inc., Tax Collector of Cameron Parish, North American Land Company, Inc., Bell City Drainage District of Cameron and Calcasieu Parishes*, Civil Action File No. 4, in the United States District Court for the Western District of Louisiana, Lake Charles Division, dated January 25, 1939, and recorded in Conveyance Book 41, page 49, under Entry No. 37771 of the records of Cameron Parish, Louisiana, said judgment having become final and effective through a final judgment rendered by the same court on August 30, 1939, and recorded in Conveyance Book 43, page 13, under Entry No. 41013 of the records of Cameron Parish.

6. The judgment of condemnation hereinabove described contains the following reservation of minerals in favor of the prior owners of the property who were defendants in the condemnation proceedings:

> Reserving unto the grantor, its successors, legal representatives and assigns, and specifically excepting from this acquisition all the oil, gas, sulphur and other minerals in, on or under said land, together with the right of investigating, exploring, prospecting, drilling and mining for and producing said oil, gas, sulphur and other minerals, laying pipe lines, building tanks, power stations, telephone lines and other structures, thereon to produce, save, take care of, treat, store, transport and manufacture said minerals and housing

the employees necessary for said purposes; which rights shall remain in force for a term of ten (10) years from the date of vesting of title in the United States and as long thereafter as oil, gas, sulphur or other mineral is produced from said land, or so long thereafter as grantor shall conduct drilling or reworking operations thereon with no cessation of more than sixty (60) days consecutively until production results; and, if production results, so long as such mineral is produced.

Provided further that at the end of said ten-year period of reservation, if not extended as hereinabove provided, or at the termination of any extended period in case the operation has not been carried on after said ten-year period as hereinabove provided, the right to mine, produce and market said oil, gas, sulphur or other mineral shall terminate at the end of said ten years, and the complete fee title to said lands shall thereby become vested in the United States.

Provided that forty per cent (40%) of one-eighth (⅛) royalty of all oil, gas, sulphur and other minerals so removed shall be paid to the United States of America until the total royalties so paid to the United States shall equal the purchase price of $12,870.90.

7. During a period of more than ten years after August 30, 1939, the date of the rendition of the final judgment of condemnation described in paragraph 5 hereof, no drilling or reworking operations were conducted and no production of any of the minerals named in the mineral reservation set forth in the previous paragraph was obtained from the lands described in paragraph 4.

8. As a result of the failure of the owners and holders of the mineral reservation hereinabove described to conduct operations provided for in said mineral reservation or to obtain the production of minerals within the period of ten years following the date of the final judgment of condemnation, said ten-year period terminating on August 30, 1949, the mineral reservation expired on that date, and the United States immediately became the owner of the fee simple title to the lands described in paragraph 4 hereof, including all of the minerals and mineral rights therein.

9. Since the expiration or termination of mineral reservation on August 30, 1949, and the reversion of the minerals

and mineral rights to the United States as the fee owner of the property, the United States, through its mineral lessees, has been in continuous physical possession of the property described in paragraph 4 hereof, including the minerals and mineral rights, and has continued to be and is the owner of the minerals and mineral rights in said property.

10. Notwithstanding the expiration or termination of the mineral rights originally reserved in the judgment of condemnation rendered and entered August 30, 1939, the defendants wrongfully claim all of the minerals and mineral rights in said property or mineral royalty rights emanating from the original owners and holders of the mineral reservation.

11. On November 15, 1966, the defendant Little Lake Misere Land Company, Inc., granted an oil, gas and mineral lease to one Tom H. Pal Cardin, affecting a portion of the property described in paragraph 4 hereof. This lease was recorded in Conveyance Book 222, page 655, under Entry No. 110727 of the records of Cameron Parish, and was thereafter assigned by Tom H. Pal Cardin to the defendant Forest Oil Company by instrument dated November 22, 1966, recorded in Conveyance Book 222, page 673, under Entry No. 110728 of the records of Cameron Parish.

12. The United States as the owner in fee simple of the property described in paragraph 4 hereof, including all of the minerals and mineral rights, and being in possession of said lands, minerals and mineral rights, is entitled to have its title in and to the minerals and mineral rights in the property quieted in it and against any claims asserted thereto by the defendants.

13. The United States, as owner of the property in fee simple title, is also entitled to a permanent injunction against the defendants, their officers, agents, servants, employees and attorneys, and all persons in active concert or participation with them, from asserting or claiming any right, title or interest to the minerals and mineral rights in the property.

WHEREFORE, plaintiff, the United States of America, prays for judgment against the defendants as follows:

(a) Quieting title of the United States in and to all of the minerals and mineral rights in and under the lands described in paragraph 4 hereof as against any claims and contentions on the part of the defendants;

(b) Decreeing that the United States has title to all of said minerals and mineral rights, subject only to existing oil, gas and mineral leases as granted by the United States and further decreeing that the defendants do not have any title or claim to said minerals and mineral rights;

(c) Permanently enjoining the defendants, their officers, agents, servants, employees and attorneys, and all persons in active concert or participation with them, from asserting or claiming any title or interest in and to said minerals and mineral rights;

(d) Cancelling and annulling as against the defendant Forest Oil Company that certain oil, gas and mineral lease dated November 15, 1966, granted by the defendant Little Lake Misere Land Company, Inc., to Tom H. Pal Cardin, recorded in Conveyance Book 222, page 655, under Entry No. 110727 of the records of Cameron Parish, Louisiana, which was thereafter assigned by Tom H. Pal Cardin to Forest Oil Company on November 22, 1966, said assignment having been recorded in Conveyance Book 222, page 673, under Entry No. 110728 of the records of Cameron Parish, Louisiana, and

(e) For such additional orders and decrees and such other relief as may be just and proper, together with costs.

/s/ Edward L. Shaheen
EDWARD L. SHAHEEN
United Stataes Attorney
Western District of Louisiana

/s/ D. H. Perkins, Jr.
D. H. PERKINS, JR.
Assistant United States Attorney
Western District of Louisiana

(Title Omitted)
No. 14,588

ORDER DISMISSING FOREST OIL CORPORATION AS DEFENDANT

On joint motion of Donald E. Walter, attorney for the United States of America, plaintiff, and Doyle, Smith, Doyle, Gordon, Arata & Watters, attorneys for Forest Oil Corporation, defendant in the above entitled cause (erroneously styled "Forest Oil Company" therein) and on suggesting to the Court that Forest Oil Corporation was named as a party defendant therein solely by reason of its ownership of an oil, gas and mineral lease originally granted by defendant, Little Lake Misere Land Company, Inc., on November 15, 1966, to one Tom H. Pal Carden, recorded in the Conveyance Records of Cameron Parish, Louisiana in Book 222, at page 655, under Entry No. 110727, and by said Carden subsequently assigning to Forest Oil Corporation by instrument dated November 22, 1966 and recorded in the Conveyance Records of Cameron Parish in Book 222, at page 673, under Entry No. 110728, and that prior to date of filing of the above entitled cause on April 25, 1969, that lease had terminated under its terms through failure to pay delay rentals on November 15, 1968, and Forest Oil Corporation by instrument dated November 29, 1968 and recorded in the Conveyance Records of Cameron Parish, Louisiana on December 6, 1968, in Book 245, under Entry No. 116929, surrendered and released said oil, gas and mineral lease to Little Lake Misere Land Company, Inc., and on suggesting to the Court, therefore, that Forest Oil Corporation is not claiming any title or interest in and to any minerals or mineral rights contradictorily with the United States but, on the contrary, is claiming mineral rights in and to portions of the properties described in the complaint filed in the above entitled cause under and by virtue of an oil and gas lease, BLM-A 033065, obtained from the United States of America, plaintiff in the above entitled cause, and on further suggesting that, the foregoing being considered, Forest Oil Corporation should be dismissed as a party defendant therein;

IT IS THEREFORE ORDERED that Forest Oil Corporation, defendant, be and it is hereby dismissed and discharged as a party defendant in this cause.

Shreveport, Louisiana, July 30, 1969.

/s/ Ben C. Dawkins, Jr.
United States District Judge

Submitted by:

/s/ Donald E. Walter
DONALD E. WALTER
United States Attorney
Western District of Louisiana

DOYLE, SMITH, DOYLE, GORDON,
ARATA & WATTERS

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Filed July 30, 1969

(Title Omitted)

No. 14,588

ANSWER

NOW INTO COURT, through undersigned counsel, come LITTLE LAKE MISERE LAND COMPANY, INC.; NORTH AMERICAN LAND COMPANY, INC.; GLADYS KELLY DUPUY; JAMES F. GAYLE; MRS. SHIRLEY GAYLE, ADMINISTRATRIX OF THE ESTATE OF W. GEDGE GAYLE; ALICE B. KELLY; NANCY WHITESIDE KELLY, TRUSTEE; KING CORPORATION; VORIS KING; STANLEY W. KEMP, ADMINISTRATOR OF THE ESTATE OF F. A. LEMIEUX; FRANK J. LEMIEUX; GRACE MUSSER ZOOK; MABLE MUSSER POTTER; IRENE MUSSER ERWIN; MORGAN MUSSER; A. W. NOLAND, JR.; BENNETT A. MOULTER, JR., EXECUTOR OF THE ESTATE OF A. P. PUJO; C. A. KING, II; WILLIS W. NOLAND; F. J. VINCENT; MARGARET H. HEARD; JOHN WATKINS HUBER; C. E. BRAZIL; LOUIE D. BARBE, EXECUTOR OF THE ESTATE OF A. M. BARBE; BARBE GOUDEAU; ROBERT NOLAND and H. MOSS WATKINS and for answer to the plaintiff's complaint, respectfully aver:

1.

The allegations of Paragraph 1 of said complaint are admitted.

2.

The allegations of Paragraph 2 of said complaint are admitted.

3.

The allegations of Paragraph 3 of said complaint are admitted.

4.

In answer to Paragraph 4 of said complaint, defendants admit that the United States is the owner of the surface title to the 2,574 acre tract described in said paragraph, but defendants deny that the United States has any interest in the minerals and mineral rights in said land.

5.

In answer to Paragraph 5 of said complaint, defendants admit that the United States acquired the surface rights only in the property described in Paragraph 4 of said complaint by the judgments of condemnation therein described which became final and effective on August 30, 1939, but defendants deny that said judgments vested in the United States any interest in the mineral rights in said lands.

6.

The allegations of Paragraph 6 of said complaint are admitted.

7.

The allegations of Paragraph 7 of said complaint are admitted.

8.

The allegations of Paragraph 8 of said complaint are especially denied.

9.

In answer to Paragraph 9 of said complaint, defendants admit that the United States has been in possession of the surface of the property since August 30, 1949, but all other allegations contained in said paragraph are denied.

10.

In answer to Paragraph 10 of said complaint, defendants admit that they have been and are now claiming all of the minerals and mineral rights or the mineral royalty rights emanating from the original owners and holders of the mineral reservation, but all other allegations contained in said paragraph are denied.

11.

In answer to Paragraph 11 of said complaint, defendants admit the execution and recordation of the mineral lease and assignment as described in said paragraph, but defendants aver that said mineral lease has now been released by Forest Oil Corporation.

12.

The allegations of Paragraph 12 of said complaint are denied.

13.

The allegations of Paragraph 13 of said complaint are denied.

FURTHER ANSWERING, your defendants aver:

14.

That as is alleged in the plaintiff's complaint, all of the minerals and mineral rights in the property described in said complaint were fully reserved to your defendants or their predecessors in title by the judgments of condemnation described in Paragraph 5 thereof, and defendants aver that the consideration provided for in said judgments to be paid for the expropriation of said property by the United States did not cover the value of the mineral rights therein.

15.

That as is specifically shown by the judgment of expropriation alleged on in the plaintiff's complaint, the properties involved in this suit were expropriated for public use as a Migratory Wild Life Refuge pursuant to the provisions of the Migratory Bird Treaty, 39 Stat. 1702, the Migratory Bird Treaty Act, 40 Stat. 755, and the Migratory Bird Conservation Act, 45 Stat. 1222, and the Secretary of Agriculture was duly authorized to acquire said lands by Title 7 of the Act of Congress approved June 15, 1935 (45 Stat. 378, 384), and in accordance with Articles 2626 and 2641, inclusive, Civil Code of Louisiana.

16.

When the confirmatory judgment of expropriation, again as alleged on in said complaint, became effective on August 30, 1939, there was in legal effect and existence Act No. 151 of the Louisiana Legislature of 1938 which provided in part as follows:

"* * * That when real estate is acquired by the United States of America, the State of Louisiana, or any of its

subdivisions, from any person, firm or corporation for use in any public work and/or improvement, and, by the act of acquisition, oil and gas and/or other minerals or royalties are reserved, prescription shall not run against such reservation of said oil, gas and/or other minerals or royalties."

17.

That said Act 151 of 1938 was superseded by Act No. 315 of the Louisiana Legislature of 1940 (LSA-R.S. 9:5806) which provided in part as follows:

"* * * That when land is acquired by contract, condemnation or expropriation proceedings by the United States of America, or any of its subdivisions or agencies, from any person, firm or corporation, and by the act of acquisition, verdict or judgment, oil, gas, and/or other minerals or royalties are reserved, or the land so acquired is by the act of acquisition conveyed subject to a prior sale or reservation of oil, gas and/or other minerals or royalties, still in force and effect, said rights so reserved or previously sold shall be imprescriptible."

18.

That the mineral reservation incorporated in the judgments of expropriation in favor of your defendants and their predecessors in title clearly established a mineral servitude of uncertain and indefinite duration; and defendants aver therefore that initially under the provisions of Act 151 of 1938 and subsequently under the corresponding provisions of Act 315 of 1940, said mineral rights were and are now imprescriptible.

19.

That at all times from the original reservation provided for in said judgment of condemnation and particularly subsequent to August 30, 1949, they have continued to assert their title to the mineral rights so reserved and have executed various contracts affecting these rights.

WHEREFORE, defendants pray for judgment against the plaintiff, the United States of America, as follows:

(a) Decreeing that your defendants have title to all of the minerals and mineral rights in the lands described in Paragraph 4 of plaintiff's complaint and that said mineral rights are and shall remain imprescriptible.

(b) Quieting the title of your defendants to all of the minerals and mineral rights in said lands as against any claim or contentions of the United States of America.

(c) For such additional orders and decrees and such other relief as may be just and proper, together with costs.

By their Attorneys

LISKOW & LEWIS

/s/ Austin W. Lewis
AUSTIN W. LEWIS, *Trial Attorney*
GENE W. LAFITTE
RICHARD E. GERARD
Suite 2211, 225 Baronne St.
New Orleans, Louisiana 70112
Telephone: 504-525-8553

Filed:
July 30, 1969

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAKE CHARLES DIVISION

UNITED STATES OF AMERICA, PLAINTIFF V. LITTLE LAKE MISERE LAND COMPANY, INC., ET AL DEFENDANTS	Civil Action No. 14588
UNITED STATES OF AMERICA, PLAINTIFF V. MISERE OIL & GAS COMPANY, INC., ET AL DEFENDANTS	Civil Action No. 14589

JOINT MOTION FOR CONSOLIDATION

The United States of America, plaintiff, and the defendants in each of the above entitled causes hereby jointly move the Court to consolidate said actions for the reason that they involve common questions of law and fact.

WHEREFORE, plaintiff and defendants move the Court that the above actions be ordered to be consolidated.

UNITED STATES OF AMERICA,
PLAINTIFF

BY ITS ATTORNEYS

By /s/ Donald M. Walter

By /s/ D. H. Perkins, Jr.

LISKOW & LEWIS

By /s/ Austin W. Lewis

ORDER OF CONSOLIDATION

The Court having considered the joint motion of the plaintiff and defendants to consolidate the above entitled actions.

IT IS HEREBY ORDERED that Civil Actions No. 14588 and 14589 be and they hereby are consolidated.

Shreveport, Louisiana, August 20, 1969.

/s/ Ben C. Dawkins, Jr.
United States District Judge

Filed
Aug. 20, 1969

(Title Omitted)

Nos. 14,588
14,589

STIPULATION OF FACTS

It is hereby stipulated and agreed by and between the attorneys for the parties to the above-entitled actions that the following facts are true and that no additional evidence will be required to establish such facts:

1. These actions were brought by the United States on April 25, 1969, to quiet title to the minerals and mineral rights in approximately 12,625 acres of land in Cameron Parish, Louisiana, which were acquired by the United States by purchase or in condemnation proceedings in 1937 and 1939. The lands involved in these cases form a part of the Lacassine Wild Life Refuge under the jurisdiction of the Department of the Interior.

2. The jurisdiction of this Court in these cases is predicated upon 28 U.S.C. sec. 1345.

2. By order entered August 20, 1969, these actions were consolidated for trial pursuant to Rule 42(a) F.R. Civ. P.

Civil Action No. 14588

4. The defendants, Little Lake Misere Land Company, Inc., and North American Land Company, Inc., are corporations duly organized and existing under the laws of the State of Louisiana with their principal place of business at Lake Charles in the Parish of Calcasieu, Louisiana.

5. The property described in paragraph 4 of plaintiff's complaint was acquired by the United States through a judgment of condemnation rendered in certain proceedings entitled *United States v. 2574.18 acres of land in Cameron Parish, Louisiana, Little Lake Misere Land Company, Inc., Tax Collector of Cameron Parish, North American Land Company, Inc., Bell City Drainage District of Cameron and Calcasieu Parishes,* Civil Action File No. 4, in the United States District Court for the Western District of Louisiana, Lake Charles Division, dated January 25, 1939. The judgment of January 25, 1939, is recorded in Conveyance Book 41, page 49, under Entry No. 37771 of the Records of Cameron Parish, Louisiana, the judgment in condemnation hav-

ing become final and effective through a final judgment rendered by the same court on August 30, 1939, and recorded in Conveyance Book 43, page 13, under Entry No. 41013 of the Records of Cameron Parish. Certified copies of the two judgments are annexed hereto and made a part hereof as Exhibits 1 and 2.

6. The lands acquired by the United States in the condemnation proceedings referred to in the preceding paragraph are shown in blue on the attached map marked Exhibit "A" which is made a part hereof.

7. The judgment of condemnation in Civil Action No. 4, referred to above, contains the following reservation of minerals and mineral rights in favor of the prior owners of the property who were defendants in the condemnation proceedings:

> "Reserving unto the grantor, its successors, legal representatives and assigns, and specifically excepting from this acquisition, all the oil, gas, sulphur and other minerals in, on or under said land, together with the right of investigating, exploring, prospecting, drilling and mining for and producing said oil, gas, sulphur and other minerals, laying pipe lines, building tanks, power stations, telephone lines and other structures, thereon to produce, save, take care of, treat, store, transport and manufacture said minerals and housing the employees necessary for said purposes; which rights shall remain in force for a term of ten (10) years from the date of vesting of title in the United States and as long thereafter as oil, gas, sulphur or other mineral is produced from said land, or so long thereafter as grantor shall conduct drilling or reworking operations thereon with no cessation of more than sixty (60) days consecutively until production results; and, if production results, so long as such mineral is produced.
>
> "Provided further that at the end of said ten-year period of reservation, if not extended as hereinabove provided, or at the termination of any extended period in case the operation has not been carried on after said ten-year period as hereinabove provided, the right to mine, produce and market said oil, gas, sulphur or other mineral shall terminate at the end of said ten years, and the complete fee title to said lands shall thereby become vested in the United States.

"Provided that forty per cent (40%) of one-eighth (⅛) royalty of all oil, gas, sulphur and other minerals so removed shall be paid to the United States of America until the total royalties so paid to the United Sates shall equal the purchase price of $12,870.90."

8. No drilling, reworking or other operations were conducted and no production of minerals of any kind was obtained from the lands described in Paragraph 4 of plaintiff's complaint for a period of more than ten (10) years from and after January 25, 1939, and for a period of more than ten (10) years from and after August 30, 1939.

9. By deed dated November 15, 1966, recorded in File No. 112896 in Conveyance Book 230 of the Records of Cameron Parish, the defendant Little Lake Misere Land Company, Inc., conveyed to its shareholders, all of whom have been made defendants in this action, 90% of all of the royalties payable under oil, gas and mineral leases then or thereafter affecting the lands owned by that company prior to the judgment of condmnation rendered January 25, 1939, in Civil Action No. 4.

10. The plaintiff and the defendants have continued to claim the minerals and mineral rights in the property described in Paragraph 4 of the complaint subsequent to 1949. The United States acting through the Bureau of Land Management, Department of the Interior, issued oil and gas leases on December 1, 1955, covering the lands described in Paragraph 4 of the complaint. The defendants have also executed various contracts to other persons covering the same lands in which the defendants claim the mineral and mineral rights in the lands.

Civil Action No. 14589

11. The defendant Misere Oil & Gas Company, Inc., is a corporation duly organized and existing under the laws of the State of Louisiana, having its principal place of business in Lake Charles in the Parish of Calcasieu, Louisiana.

12. The property described in Paragraph 3 of the plaintiff's complaint, consisting of 10,048.01 acres of land in Cameron Parish, Louisiana, was acquired by the United States by an act of sale (deed) dated July 23, 1937, from Misere Land Company, Inc., a Louisiana corporation, as vendor, to the United States of America, as vendee, re-

corded in Conveyance Book 34, page 60, in File No. 36321 of the Records of Cameron Parish, Louisiana. The act of sale (deed) contains the following mineral reservation in favor of the vendor:

> "Reserving unto vendor, its successors, legal representatives and assigns, and specifically excepting from this sale all the oil, gas, sulphur and other minerals in, on or under said land, together with the right of investigating, exploring, prospecting, drilling and mining for and producing said oil, gas, sulphur and other minerals, laying pipe lines, building tanks, roads and canals, power stations, telephone lines and other structures thereon to produce, save, take care of, treat, store, transport and manufacture said minerals, and housing the employees necessary for said purposes, which rights shall remain in force for a term of ten years from the date of the deed conveying said land and as long thereafter as oil, gas, sulphur or other mineral is produced from said land, or so long thereafter as vendor shall conduct drilling or reworking operations thereon with no cessation of more than sixty consecutive days until production results, and if production results, so long as such mineral is produced.
>
> "Provided further that at the end of said ten year period of reservation, if not extended as hereinabove provided, or at the termination of any extended period in case the operation has not been carried on after said ten-year period, as hereinabove provided, the right to mine, produce and market said oil, gas, sulphur and other minerals shall terminate at the end of said ten years, and the complete fee title to said land shall thereby become vested in the United States.
>
> "Provided that forty per cent (40%) of one-eighth (⅛) royalty of all oil, gas, sulphur and other minerals so removed shall be paid to the United States of America until the total royalties so paid to the United States shall equal the purchase price of $40,192.04."

Certified copy of said act of sale is annexed hereto as Exhibit 3.

13. The lands acquired by the United States by the act of sale (deed) of July 23, 1937, referred to in the previous

paragraph, are shown in red on the attached map which is made a part hereof as Exhibit "A".

14. No drilling, reworking or other operations were conducted and no production of minerals of any kind was obtained from the lands described in Paragraph 3 of plaintiff's complaint for a period of more than ten (10) years from and after July 23, 1937.

15. Misere Land Company, Inc., vendor in the deed to the United States of July 23, 1937, was completely and finally liquidated, and Alvin O. King, the duly elected and qualified Liquidator of said corporation, by deed dated December 27, 1943, conveyed to the shareholders of Misere Land Company, Inc., as a liquidating dividend, the minerals and mineral rights reserved by Misere Land Company, Inc., in the act of sale to the United States of July 23, 1937.

16. By various acts dated various dates in 1967, all parties who acquired from the Liquidator of Misere Land Company, Inc., the mineral rights reserved by Misere Land Company, Inc., in the act of sale to the United States of July 23, 1937 (or the successors of those parties who had then died) conveyed such minerals and mineral rights to Misere Oil & Gas Company, Inc., defendant in this action.

17. By deed dated March 28, 1968, recorded in File No. 114405 of the Records of Cameron Parish, Misere Oil & Gas Company, Inc., conveyed to the remaining parties named as defendants in this action 90% of all the royalties payable under oil, gas and mineral leases then affecting the lands described in Paragraph 3 of plaintiff's complaint, or royalties reserved in any lease thereafter executed affecting said lands.

18. The whole of the land described in Paragraph 3 of plaintiff's complaint was acquired by Misere Land Company, Inc., from the Smith Land & Lumber Company, Inc., February 26, 1929, for $46,000.00, $11,500.00 of which was paid in cash and the balance in four promissory notes, each for $8,625.00 due at the end of successive yearly periods. The land was sold by Misere Land Company, Inc., to the United States on July 23, 1937, for $40,192.04 cash, subject to the reservation of mineral rights set forth in Paragraph 12 of this stipulation.

19. The plaintiff and the defendants have continued to claim the minerals and mineral rights in the property described in Paragraph 3 of plaintiff's complaint subsequent

to 1947. The United States acting through the Bureau of Land Management, Department of the Interior, issued oil and gas leases on December 1, 1955, covering the lands described in Paragraph 3 of the complaint. The defendants have also executed various contracts to other persons covering the same lands in which the defendants claim the mineral and mineral rights in the lands.

IN TESTIMONY WHEREOF, this stipulation is executed this 6th day of May, 1970.

/s/ Donald E. Walter
DONALD E. WALTER
United States Attorney for the Western District of Louisiana

/s/ Dosite H. Perkins, Jr.
DOSITE H. PERKINS, JR.
Assistant United States Attorney
Attorneys for Plaintiff

/s/ Austin W. Lewis
AUSTIN W. LEWIS
Attorney for Defendants

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF LOUISIANA
LAKE CHARLES DIVISION

UNITED STATES OF AMERICA PETITIONER VS. 2574.18 acres of land in Cameron Parish, Louisiana, Little Lake Misere Land Company, Inc., Tax Collector of Cameron Parish, North American Land Company, Inc., Bell City Drainage District of Cameron and Calcasieu Parishes.	Civil Action File No. 4

STIPULATION

It is hereby stipulated and agreed by and between the United States of America, petitioner, the Little Lake Misere Land Company, Inc., the North American Land Company, Inc., the Tax Collector of Cameron Parish, Louisiana, and the Bell City Drainage District of Cameron and Calcasieu Parishes, Louisiana, defendants, represented herein by their respective counsel, that a judgment and decree be entered herein in accordance with the attached consent decree.

Dated and signed at Lake Charles, Louisiana, January 24, 1939.

J. Fair Hardin
Attorney for the United States of America

By Alvin O. King
Attorneys for the Little Lake Misere Land Co. Inc., and the North American Land Co., Inc.

S. W. Plauche
Attorney for the Tax Collector of Cameron Parish, Louisiana, and the Bell City Drainage District of Cameron and Calcasieu Parishes, Louisiana, as Special Attorney General

EXHIBIT 1

Filed Jan. 24, 1939
E. C. Jackson, Clerk,
By Chas. B. Forshee
Deputy Clerk

(Title Omitted)

File No. 4

JUDGMENT

This cause coming on for hearing, after issue joined by answer of all defendants and in accordance with a written stipulation by all defendants herein filed, and the same being properly fixed for trial, the cause was duly taken up in open court at Lake Charles, Louisiana, on the 24th day of January, 1939, and tried, the evidence adduced and closed, and the Court having found that it had jurisdiction herein and that it was necessary that the property herein expropriated be taken for public use and the said proceedings were properly brought and prosecuted pursuant to the provisions of the Migratory Bird Treaty, 39 Stat. 1702, the Migratory Bird Treaty Act, 40 Stat. 755, and the Migratory Bird Conservation Act, 45 Stat. 1222, and that the Secretary of Agriculture was duly authorized to acquire the lands hereinafter described by Title 7 of the Act of Congress approved June 15, 1935, (45 Stat. 378, 384), and in accordance with Articles 2626 to 2641, inclusive, Civil Code of Louisiana, and the issues herein being submitted to the Court, and it having entered a judgment herein in favor of the plaintiff, United States of America, and against the defendants herein, Little Lake Misere Land Company, Inc., Tax Collector of Cameron Parish, North American Land Company, Inc., Bell City Drainage District of Cameron and Calcasieu Parishes,

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that there be judgment in favor of the United States of America and against the defendants herein as named above, condemning and expropriating the following described property and assessing the value thereof at the following sums:

TRACT (140): In Township Thirteen (13) South, Range Six (6) West, Louisiana Meridian: All Section One (1); that part of Section 2 (2) lying East of the East right-of-way boundary of the Bell City Drainage Canal; that part of

Section Eleven (11) lying East of the East right-of-way boundary of the Bell City Drainage Canal, North of Little Lake Misere, and North of the North right-of-way boundary of the Intracoastal Waterway; and, in Section Twelve (12), that part lying North of the North right-of-way boundary of the Intracoastal Waterway, and bounded as follows:

Beginning at Corner 1, the intersection of the line common to Ts. 12 and 13 S., R 6 W., Secs. 35 and 2, with the East right-of-way boundary of the Bell City Drainage Canal; thence with part of the line common to T. 12 S., Sec. 35, and T. 13 S. Sec. 2, S. 89° 55′ E., 81.71 ch., to Corner 2, common to T. 12 S., Secs. 35 and 36, and T. 13 S., Secs. 1 and 2; thence; with the line common to T. 12 S., Sec. 36, and T. 13 S., Sec. 1, S 89° 55′ E., 82.68 chains, to Corner 3, Common to Ts. 12 and 13 S., Rs. 5 and 6 W., Secs. 1, 6, 31 and 36; thence in part with the line common to R. 5 W., Sec. 6, 6W, Sec. 1, and in part with part of the line common to R. 5W., Sec. 7 and R 6W Sec. 12, in T. 13 S., S. 96.67 chains to Corner 4, in the North right-of way boundary of the Intracoastal Waterway; thence, with the North right-of-way boundary of the Intracoastal Waterway, in part through Sec. 12 and in part through Sec. 11, R. 6 W., S. 69° 55′ W. 57.28 ch. to Corner 5; S. 69° 55′ W. 45.85 chs. to Corner 6, the intersection of the North right-of-way boundary of the Intracoastal Waterway with the Northeast shore of Little Lake Misere; thence, with the meanders of the Northeast shore of Little Lake Misere, N. 45° 46′ W., 0.21 chain (6–1); N. 84° 32′ W., 2.89 chs., (6–2); N. 11° 29′ W., 3.88 chains, (6–3); S. 77° 39′ W., 2.27 chs., (6–4) N. 62° 11′ W. 3.60 chains, (6–5); N. 83° 23′ W., 15.00 chains, (6–6) S. 60° 52′ W., 5.96 chs. (6–7); S. 55° 30′ W., 5.23 chs., to Corner 7, the intersection of the North shore of Little Lake Misere with the East right-of-way boundary of the Bell City Drainage Canal; thence, along the East right-of-way boundary of the Bell City Drainage Canal, in part through Sec. 11 and in part through Sec. 2, T. 13 S., R. 6 W., N. 33° 23′ W., 56.28 ch., to Corner 8, N. 31° 32′ W., 1.19 chs., (8–1); N. 27° 49′ W., 1.18 chs., (8–2); N. 24° 06′ W., 1.18 chs., (8–3); N. 20° 23′ W., 1.18 chs., (8–4); N. 16° 40′ W., 1.18 chs., (8–5); N. 12° 57′ W., 1.18 chs., (8–6); N. 9° 14′ W., 1.18 chs., (8–7); N. 5° 31′ W., 1.18 chs., (8–8); N. 1° 49′ W., 1.19 chs., to Corner 9; N. 0° 03′ E., 34.07 chs. to Corner 10; N. 0° 03′ E., 40.00 chs., to the place of beginning; containing one thousand eight hundred

ninety-four and sixty-one-hundredths (1,894.61) acres, more or less.

TRACT (140-I): In Township Thirteen (13) South, Range Six (6) West, Louisiana Meridian: That part of Sections Eleven (11), Twelve (12) and Thirteen (13) lying South of the South right-of-way boundary of the Intracoastal Waterway and North of the North shores of Little Lake Misere and Lake Misere, bounded as follows:

Beginning at Corner 1, the intersection of the line common to T. 13 S., Rs. 5 and 6 W., Secs. 13 and 18, with the North shore of Lake Misere; thence, in part along the North shore of Lake Misere, and in part with the North shore of Little Lake Misere with the meanders thereof, in part through Secs. 13, 12 and 11, T. 13 S., R. 6 W., S. 68° 16′ W., 0.38 ch., (1–1); S. 82° 27′ W., 11.88 chs., (1–2); N. 86° 09′ W., 6.76 chs., (1–3); N. 74° 49′ W., 3.07 chs., (1–4); N. 52° 36′ W., 4.17 chs., (1–5); N. 43° 30′ W., 5.39 chs., (1–6); N. 71° 01′ W., 11.17 chs., (1–7); S. 75° 30′ W., 7.27 chs., to Corner 2; North 12° 17′ W., 5.00 chs., (2–1); N. 32° 29′ W., 4.34 chs., (2–2); N. 17° 33′ W., 2.85 chs., (2–3); N. 19° 07′ E., 2.30 chs., (2–4); S. 80° 11′ W., 4.53 chs., (2–5); N. 56° 18′ W., 4.30 chs., (2–6); N. 70° 46′ W., 7.70 chs., (2–7); N. 55° 36′ W., 11.75 chs., (2–8); N. 61° 18′ W., 9.34 chs., (2–9); N. 33° 46′ W., 5.53 chs., (2–10); N. 8° 46′ W., 3.46 chs., (2–11); N. 35° 49′ W., 7.13 chs., (2–12); N. 45° 46′ W., 3.25 chs., to Corner 3, the intersection of the Northeast shore of Little Lake Misere with the South right-of-way boundary of the Intracoastal Waterway; thence, along the South right-of way boundary of the Intracoastal Waterway, in part through Sec. 11 and in part through Sec. 12, N. 69° 55′ E., 43.66 chs., to Corner 4; N. 69° 55′ E., 55.64 chs., to Corner 5, the intersection of the South right-of-way boundary of the Intracoastal Waterway with the line common to Rs. 5 and 6 W., Secs. 7 and 12; thence, with part of the line common to Rs. 5 and 6 W., in part with part of the line common to Secs. 7 and 12 and in part with the line common to Secs. 13 and 18, S. 86.68 chs., to the place of beginning, containing four hundred ninety-four and sixty-two one-hundredths (494.62) acres, more or less.

TRACT (140-II): In Township Thirteen (13) South, Range Six (6) West, Louisiana Meridian: That part of Section Two (2) lying West of the West right-of way boundary of the Bell City Drainage Canal, and bounded as follows:

Beginning at Corner 1, common to Secs. 2, 3, 10 and 11;

thence, with part of the line common to Secs. 2 and 3, N. 0° 03′ E., 0.54 ch., to Corner 2, the intersection of the line common to Secs. 2 and 3 with the West right-of-way boundary of the Bell City Drainage Canal; thence with the West right-of-way line of the Bell City Drainage Canal, S. 16° 40′ E., 0.56 ch., to Corner 3, the intersection of the West right-of-way line of the Bell City Drainage Canal with the line common to Secs. 2 and 11; thence, with part of the line common to Secs. 2 and 11, N. 89° 55′ W., 0.16 ch., to the place of beginning; containing four one-thousandths (0.004) acre, more or less.

TRACT (140-III): In Township Thirteen (13) South, Range Six (6) West, Louisiana Meridian: That part of Section Two (2) lying between the center line and the East right-of-way boundary of the Bell City Drainage Canal; and that part of Section Eleven (11) lying between the East and West right-of-way boundaries of the Bell City Drainage Canal, and bounded as follows:

Beginning at Corner 1, common to T. 12 S., Secs. 34 and 35, and T. 13 S., Secs. 2 and 3, in the center of the Bell City Drainage Canal; thence, with part of the line common to T. 12 S., Sec. 35, and T. 13 S., Sec. 2, S. 89° 55′ E., 0.76 ch., to Corner 2, the intersection of the line common to Ts. 12 and 13 S., Secs. 35 and 2, with the East right-of-way boundary of the Bell City Drainage Canal; thence, along the East right-of-way boundary of the Bell City Drainage Canal, in part through Sec. 2 and in part through Sec. 11, S. 0° 03′ W., 40.00 chs., to Corner 3; S. 0° 03′ W. 34.07 chs., to Corner 4; S. 1° 49′ E., 1.19 chs., (4–1); S. 5° 31′ E., 1.18 chs., (4–2); S. 9° 14′ E., 1.18 chs., (4–3); S. 12° 57′ E., 1.18 chs., (4–4); S. 16° 40′ E., 1.18 chs., (4–5); S. 20° 23′ E., 1.18 chs., (4–6); S. 24° 06′ E., 1.18 chs., (4–7); S. 27° 49′ E., 1.18 chs., (4–8); S. 31° 32′ E., 1.19 chs., to Corner 5; S. 33° 23′; E., 56.28 chs., to Corner 6, the intersection of the East right-of-way boundary of the Bell City Drainage Canal with the North shore of Little Lake Misere; thence, with the Northwest shore of Little Lake Misere, crossing the mouth of the Bell City Drainage Canal, S. 56° 03′ W., 1.52 chs., to Corner 7, the intersection of the Northwest shore of Little Lake Misere with the West right-of-way boundary of the Bell City Drainage Canal; thence, along the West right-of-way boundary of the Bell City Drainage Canal, N. 33° 23′ W., 56.31 chs., to Corner 8; N. 31° 32′ W., 1.27 chs., (8–1); N. 27° 49′ W., 1.28

chs., (8–2); N. 24° 06′ W., 1.28 chs., (8–3); N. 20° 23′ W., 1.28 chs., (8–4); N. 16° 40′ W., 0.38 ch. to Corner 9, the intersection of the West right-of-way boundary of the Bell City Drainage Canal with the line common to Secs. 2 and 11; thence with part of the line common to Secs. 2 and 11, S 89° 55′ E., 0.79 ch., to Corner 10, the intersection of the line common to Secs. 2 and 11 with the center line of the Bell City Drainage Canal; thence, along the center line of the Bell City Drainage Canal; in Sec. 2, N. 16° 40′ W., 1.10 chs., (10–1); N. 12° 57′ W., 1.23 chs., (10–2); N. 9° 14′ W., chs. (sic), (10–1); N. 12° 57′ W., 1.23 chs., (10–2); N. 9° 14′ W., 1.23 chs., (10–3); N. 5° 31′ W., 1.23 chs., (10–4); N. 1° 49′ W., 1.23 chs., to Corner 11, the intersection of the center line of the Bell City Drainage Canal with the line common to Secs. 2 and 3; thence, with part of the line common to Secs. 2 and 3, N. 0° 03′ E., 34.08 chs., to Corner 12; N. 0° 03′ E., 40.00 chs., to the place of beginning containing fifteen and forty one-hundredths (15.40) acres, more or less.

TRACT (140-IV): In Township Thirteen (13) South, Range Six (6) West, Louisiana Meridian: That part of section Two (2) lying between the center line and the West right-of-way boundary line of the Bell City Drainage Canal, and bounded as follows:

Beginning at Corner 1, the intersection of the West right-of-way boundary of the Bell City Drainage Canal with the line common to Secs. 2 and 11; thence, with the West right-of-way boundary of the Bell City Drainage Canal, in Sec. 2, N. 16° 40′ W., 0.56 ch., to Corner 2, the intersection of the West right-of-way boundary of the Bell City Drainage Canal with the line common to Secs. 2 and 3; thence, with part of the line common to Secs. 2 and 3, N. 0° 03′ E., 5.38 chs. to Corner 3, the intersection of the line common to Secs. 2 and 3, with the center line of the Bell City Drainage Canal; thence, along the center line of the Bell City Drainage Canal, in Sec. 2, S. 1° 49′ E., 1.23 chs., (3–1); S. 5° 31′ E., 1.23 chains, (3–2); S. 9° 14′ E., 1.23 chs., (3–3); S. 12° 57′ E., 1.23 chs., (3–4); S. 16° 40′ E., 1.10 chs., to Corner 4, the intersection of the center line of the Bell City Drainage Canal with the line common to Secs. 2 and 11; thence, with part of the line common to Secs. 2 and 11, N. 89° 55′ W. 0.79 Ch., to the place of beginning; containing 0.185 acre, more or less.

TRACT (140-V): In Township Thirteen (13) South, Range Six (6) West, Louisiana Meridian: That part of

fractional sections Eleven (11) and Twelve (12) included within the right-of-way of the Intracoastal Waterway, lying northeast of Little Lake Misere, and bounded as follows:

Beginning at Corner 1, the intersection of the northerly right-of-way boundary of the Intracoastal Waterway with the northeast shore of Little Lake Misere; thence, along the shore of Little Lake Misere crossing the Intracoastal Waterway S. 45° 46′ E. 5.05 chains to Corner 2, the intersection of the southerly right-of-way boundary of the Intracoastal Waterway with the Northeast shore of Little Lake Misere with southerly right-of-way boundary of the Intracoastal Waterway N. 69° 55′ E. 43.66 chains to Corner 3; N. 60° 55′ E. 55.64 chains to Corner 4, the intersection of the southerly right-of-way boundary of the Intracoastal Waterway with the line common to Rs. 5 and 6 W., Section 7 and fractional Section 12; thence with the line common to Section 7 and fractional Section 12, Rs. 5 and 6 W., T. 13 S., crossing the Intracoastal Waterway North, 4.84 chains to Corner 5, the intersection of the line common to Ranges 5 and 6 W., Sec. 7 and fractional section 12, with the northerly right-of-way boundary of the Intracoastal Waterway; thence along the northerly right-of-way boundary of the Intracoastal Waterway S. 69° 55′ W. 57.28 chains to corner 6; S. 69° 55′ W., 45.85 chains to the place of beginning, containing 46.031 acres, more or less.

TRACT (140a): In Township Thirteen (13) South, Range Six (6) West, Louisiana Meridian: That part of Section Eleven (11) lying West of the West right-of-way boundary of the Bell City Drainage Canal, West of Little Lake Misere, and North of the North right-of-way boundary of the Intracoastal Waterway, and bounded as follows:

Beginning at Corner 1, common to Secs. 2, 3, 10 and 11: thence, with part of the line common to Secs. 2 and 11, S. 89° 55′ E., 0.16 ch., to Corner 2, the intersection of the line common to Secs. 2 and 11 with the West right-of-way boundary of the Bell City Drainage Canal in Sec. 11, S 16° 40′ E., 0.38 ch., (2–1); S. 20° 23′ E., 1.28 chs., (2–2); S. 24° 06′ E., 1.28 chs., (2–3); S. 27° 49′ E., 1.28 chs., (2–4); S. 31° 32′ E., 1.27 chs., Corner 3; S. 33° 23′ E., 56.31 chs., to Corner 4, the intersection of the West right-of-way boundary line of the Bell City Drainage Canal with the Northwesterly shore of Little Lake Misere; thence, along the Northwesterly shore

of Little Lake Misere with the meanders thereof, S. 11° 38′ W., 6.81 chs., (4–1); S 4° 14′ E., 5.28 chs., (4–2); S. 85° 09′ W., 1.62 chs., to Corner 5, the intersection of the Northwesterly shore of Little Lake Misere with the North right-of-way boundary of the Intracoastal Waterway; thence, with the North right-of-way boundary of the Intracoastal Waterway, S. 86° 13′ W., 5.30 chs., Corner 6; N. 87° 58′ W., 5.56 Chs., Corner 7; N. 84° 58′ W., 20.27 chs., to Corner 8; the intersection of the North right-of-way boundary of the Intracoastal Waterway with the line common to Secs. 10 and 11; thence, with part of the line common to Secs. 10 and 11, N. 0° 03′ E., 22.34 chs., Corner 9; N. 0° 03′ E., 40.00 chs., to the place of beginning; containing 123.34 acres, more or less, at the price of $5.00 per acre, or a total of ..... $12,870.90. And together there with all accretion land and all and singular the water rights and other rights, tenements, hereditaments and appurtenances thereunto belonging or in any wise appertaining, but subject to the existing easements and servitude resulting from the construction and operation of the Bell City Drainage Canal and the Intracoastal Waterway and subject to the following reservation:

Reserving unto the grantor, its successors, legal representatives and assigns, and specifically excepting from this acquisition, all the oil, gas, sulphur and other minerals in, on or under the said land, together with the right of investigating, exploring, prospecting, drilling and mining for and producing said oil, gas, sulphur and other minerals, laying pipe lines, building tanks, power stations, telephone lines and other structures, thereon to produce, save, take care of, treat, store, transport and manufacture said minerals and housing the employees necessary for said purpose; which rights shall remain in force for a term of ten (10) years from the date of vesting of title in the United States and as long thereafter as oil, gas, sulphur or other mineral is produced from said land, or so long thereafter as grantor shall conduct drilling or reworking operations thereon with no cessation of more than sixty (60) days consecutively until production results; and, if production results, so long as such mineral is produced.

Provided further that at the end of said ten-year period of reservation, if not extended as hereinabove provided, or at the termination of any extended period in case the

operation has not been carried on after said ten-year period as hereinabove provided, the right to mine, produce and market said oil, gas, sulphur or other mineral shall terminate at the end of said ten years, and the complete fee title to said lands shall thereby become vested in the United States.

Provided that forty per cent (40%) of one-eighth (⅛) royalty of all oil, gas, sulphur and other minerals so removed shall be paid to the United States of America until the total royalties so paid to the United States shall equal the purchase price of $12,870.90.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the said sum of Twelve Thousand Eight Hundred Seventy Dollars and Ninety Cents ($12,870.90) shall be paid by the United States of America into the registry of the Court and that the United States shall have full, absolute and complete title to said land, subject to the reservation of minerals and the servitudes as hereinabove set forth, from and after the date of deposit of said money in the registry of the court.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Clerk of this court be and she is hereby ordered and directed to pay out of said sum of money to the Little Lake Misere Land Company, Inc., herein decreed to be entitled thereto, the sum of Eleven Thousand One Hundred Ten and 90/100 Dollars ($11,110.90), and to pay to the Tax Collector of Cameron Parish, Louisiana, the sum of Seventeen Hundred and Sixty & No/100 Dollars (1760.00).

THUS DONE, RENDERED, READ ALOUD AND SIGNED in open court at Lakes Charles, Louisiana, this the 25th day of January, 1939.

/s/ Ben C. Dawkins
Judge

DISTRICT COURT OF THE UNITED STATES
WESTERN DISTRICT OF LOUISIANA
CLERK'S OFFICE

I, E. C. JACKSON, Clerk of the United States District Court for the Western District of Louisiana, do hereby certify that the foregoing eight pages contain a full, true and correct copy of

Stipulation and Judgment
in the cause entitled United States of America
versus
2574.18 acres of land in Cameron Parish, La., et al. No. 4
on the Civil Docket of said Court, as the original of same appears on file in this office.

WITNESS my hand and seal of office at the City of Shreveport, Louisiana, on this the 25th day of Jan., A.D. 1939.

L. C. Jackson
Clerk, U.S. District Court
Western District of Louisiana

By /s/ Mina E. Holt
Deputy Clerk

—oOo—

(Title Omitted)

File No. 4

FINAL JUDGMENT

This cause coming on for hearing, upon motion of the United States for final judgment, and it appearing that deposit has been made by the United States into the registry of this court of the sum of Twelve Thousand Eight Hundred Seventy and 90/100 ($12,870.90) Dollars, as prescribed by the judgment of this Court of date January 25, 1939, as shown by the receipt and certificate of clerk of this court of date August 21, 1939, said deposit being made for the use and benefit of the persons entitled thereto and as just compensation for the property herein condemned and in satisfaction of the judgment entered herein on January 25, 1939.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that valid and fee simple title to all of the property described in said judgment of date January 25, 1939, be and it is now vested in the United States of America, subject only to the reservations and exceptions as are set forth in the said judgment herein of date January 25, 1939.

THUS DONE, RENDERED AND SIGNED at Monroe, Louisiana, on this 30 day of August, 1939.

Ben C. Dawkins,
Judge

EXHIBIT 2

UNITED STATES OF AMERICA
STATE OF LOUISIANA
PARISH OF CALCASIEU

BE IT KNOWN: That on this 23rd day of the Month of July in the year of our Lord one thousand nine hundred and thirty-seven, before me, Frank Field, a Notary Public, duly commissioned and qualified, in and for the Parish of Calcasieu, State of Louisiana, therein residing, and in the presence of the witnesses hereinafter named and undersigned, personally came and appeared H. G. CHALKLEY, the president, and ALVIN O. KING, the secretary of the Misere Land Company, Inc., a corporation organized under the laws of the State of Louisiana, domiciled at Lake Charles, Calcasieu Parish, Louisiana, who declare that the said Misere Land Company, Inc. does by these presents grant, bargain, sell, convey, transfer, assign, set over, abandon and deliver, with all legal warranties and with full substitution and subrogation in and to all the rights and actions of warranty which it has or may have against all preceding owners and vendors, unto the United States of America here present and represented by its agent, NORTON L. WISDOM, purchasing for itself and its assigns, and acknowledging due delivery and possession thereof, all and singular the following described property, to-wit:

All of Sections Thirty-five and Thirty-six, Township Twelve South, Range Six West.

All of Sections thirty-one, Thirty-Two, Thirty-three, Thirty-four; all of Fractional Section Thirty-five, West of Lacassine Bayou; all of Fractional Section Thirty-six, West of Lacassine Bayou; all in Township Twelve South, Range Five West.

All of Section Two, West of Lacassine Bayou; all of Sections Three, Four, Five, Six, Seven, Eight, Nine; all of Section Ten, West of Lacassine Bayou; all of Section Eleven, West of Lacassine Bayou; all of Section Fifteen, North of Lake Misere; all of Section Seventeen, North of Lake Misere; all of Section Eighteen, North of Lake Misere; all in Township Thirteen South, Range Five West, less right of way of Intercoastal (sic) Canal, all located in Parish of Cameron, all of Louisiana Meridian, together with all rights, privileges

and appurtenances thereto belonging, containing ten thousand forty-eight and 01/100 acres, more or less.

Reserving unto vendor, its successors, legal representatives and assigns, and specifically excepting from this sale all the oil, gas, sulphur and other minerals in, on or under said land, together with the right of investigating, exploring, prospecting, drilling and mining for and producing said oil, gas, sulphur and other minerals, laying pipe lines, building tanks, roads and canals, power stations, telephone lines and other structures thereon to produce, save, take care of, treat, store, transport and manufacture said minerals, and housing the employees necessary for said purposes, which rights shall remain in force for a term of ten years from the date of the deed conveying said land and as long thereafter as oil, gas, sulphur or other mineral is produced from said land, or so long thereafter as vendor shall conduct drilling or re-working operations thereon with no cessation of more than sixty consecutive days until production results, and if production results, so long as such mineral is produced.

Provided further that at the end of said ten year period of reservation, if not extended as hereinabove provided, or at the termination of any extended period in case the operation has not been carried on after said ten year period, as hereinabove provided, the right to mine, produce and market said oil, gas, sulphur and other minerals shall terminate at the end of said ten years, and the complete fee title to said land shall thereby become vested in the United States.

Provided that forty per cent (40%) of one-eighth (⅛) royalty of all oil, gas, sulphur and other minerals so removed shall be paid to the United States of America until the total royalties so paid to the United States shall equal the purchase price of $40,192.04.

To Have And to Hold the above described property unto the said purchaser, the United States of America, and its assigns forever.

This sale is made and accepted for and in consideration of the price and sum of Forty Thousand, One Hundred Ninety-Two and 04/100 ($40,192.04) Dollars, cash, which the said purchaser has well and truly paid, in ready and current money to the said Misere Land Company, Inc., who hereby

acknowledges the receipt thereof and grants full acquittance and discharge thereof.

All State and Parish taxes up to and including the taxes due and exigible in the year 1936 are paid, as evidenced by the tax receipts exhibited to the undersigned Notary.

THUS DONE AND PASSED, in my office at Lake Charles, Louisiana, on the day, month and year herein first above written, in the presence of S. Arthur Knapp, and Charles J. Wehrt, competent witnesses, who hereunto sign their names with the said appearers, and me, Notary, after reading of the whole.

WITNESSES:

S. Arthur Knapp
Charles J. Wehrt

MISERE LAND COMPANY

By /s/ H. G. Chalkley
President

By /s/ Alvin O. King
Secretary

UNITED STATES OF AMERICA

By /s/ Norton L. Wisdom
Agent

BEFORE ME,

Frank Field
Notary Public

EXHIBIT 3

I, ALVIN O. KING, Secretary of the Misere Land Company, Inc., a corporation organized under the laws of Louisiana, domiciled at Lake Charles, Louisiana, hereby certify that the following is a true and correct copy of a resolution of the Board of Directors of said company, adopted at a meeting of the Board on July 23, 1937, at which meeting the following directors were present, to-wit: W. P. Weber, H. J. Chalkley, Maurice J. Muller, and Alvin O. King, to-wit:

RESOLUTION

"BE IT RESOLVED by the Board of Directors of the Misere Land Company, Inc. that this company sell to the United States of America for the cash consideration of $40,192.04, subject to the provisions for the reservation of the minerals hereinafter stated, the following described land located in Cameron Parish, Louisiana, to-wit:

NOTE:

[Description omitted.]

"BE IT FURTHER RESOLVED that H. G. Chalkley, President of this company, be, and he is hereby, authorized to sign and execute the deed and all papers necessary to sell and convey said property as hereinabove provided, and to receive the consideration for the same, and all acts and things done or to be done by him in connection with the sale and transfer of said land be and the same are hereby ratified and approved."

IN TESTIMONY WHEREOF, witness my official signature and seal of said company at Lake Charles, Louisiana, on July 23, 1937.

/s/ Alvin O. King
Secretary
Misere Land Company

Filed:

May 6, 1970

(Title Omitted)

No. 14,588

MOTION FOR SUMMARY JUDGMENT

Defendants move the Court to enter, pursuant to Rule 56 of the Federal Rules of Civil Procedure, a Summary Judgment in Defendants' favor dismissing the action of Plaintiff and decreeing minerals and mineral rights reserved to the landowners in judgments dated January 25, 1939, and August 30, 1939, in suit entitled *United States v. 2574.18 acres of land in Cameron Parish, Louisiana, Little Lake Misere Land Company, Inc., Tax Collector of Cameron Parish, North American Land Company, Inc., Bell City Drainage District of Cameron and Calcasieu Parishes,* Civil Action No. 4 in the United States District Court for the Western District of Louisiana, Lake Charles Division, to be still effective for the reason that based on the stipulation of fact heretofore entered into by the parties and filed in this cause there is no genuine issue as to any material fact and the Defendants are entitled to judgment as a matter of law.

Respectfully submitted,

LISKOW & LEWIS

By /s/ Austin W. Lewis
AUSTIN W. LEWIS, *Trial Attorney*
GENE W. LAFITTE
RICHARD E. GERARD

Filed

Aug. 5, 1970

(Title Omitted)
No. 14,588
No. 14,589

MOTION FOR SUMMARY JUDGMENT BY PLAINTIFF, UNITED STATES OF AMERICA

The United States of America, plaintiff, moves the Court for a Summary Judgment, pursuant to Rule 56 of the Fed-

eral Rules of Civil Procedure, against defendants in conformity with the prayer of its complaint.

This motion is based upon the pleadings filed herein and upon the Stipulation of Fact entered into by the parties.

There is no genuine issue as to any material fact, and mover is entitled to a judgment herein as a matter of law.

WHEREFORE, the United States of America prays the Court to enter a Summary Judgment in its favor and against the defendants in conformity with the prayer of its complaint.

/s/ Donald E. Walter
/s/ Dosite H. Perkins, Jr.

(Title Omitted)
No. 14,588
No. 14,589

FOR PLAINTIFF

Messrs.:
Donald E. Walter, *U.S. Attorney*
D. H. Perkins, Jr., *Asst. U.S. Attorney*
P. O. Box 33
Shreveport, Louisiana

FOR DEFENDANTS

Liskow and Lewis
P. O. Box 970
Lake Charles, Louisiana

Doyle, Smith, Doyle, Gordon, Arata and Watters
23rd Floor, 225 Baronne Street
New Orleans, Louisiana

HUNTER, JUDGE:

Pursuant to Rule 42(a), Federal Rules of Civil Procedure, these actions, brought by the United States to quiet title to real property in Cameron Parish, in the State of Louisiana, were consolidated. Title to the property, described in de-

tail in the complaints, was acquired by the United States in one instance (Civil Action No. 14589) by purchase on July 23, 1937, and in the other (Civil Action No. 14588) by condemnation action and judgment entered August 30, 1939. The acquisitions were for the purpose of creating a migratory bird sanctuary in accordance with the provisions of the Migratory Bird Treaty, 39 Stat. 1702 (1916) the Migratory Bird Treaty Act, 40 Stat. 755 (1918), 16 U.S.C.A. § 703, and the Migratory Bird Conservation Act, 45 Stat. 1222 (1929), 16 U.S.C.A. § 715(a) through (e); and Articles 2626 through 2641, inclusive, Civil Code of Louisiana and 28 La. Stat. Ann. Rev. Stat. Title 52. The lands involved form a part of the Lacassine Wildlife Refuge.

The land was acquired subject to reservations of oil, gas, sulphur or other minerals. The judgment of condemnation contained the following reservation of minerals and mineral rights in favor of the owners of the property:

> Reserving unto the grantor, its successors, legal representatives and assigns, and specifically excepting from this acquisition, all the oil, gas, sulphur and other minerals in, on or under said land, together with the right of investigating, exploring, prospecting, drilling and mining for and producing said oil, gas, sulphur and other minerals, laying pipelines, building tanks, power stations, telephone lines and other structures, thereon to produce, save, take care of, treat, store, transport and manufacture said minerals and housing the employees necessary for said purposes; which rights shall remain in force for a term of ten (10) years from the date of vesting of title in the United States and as long thereafter as oil, gas, sulphur or other mineral is produced from said land, or so long thereafter as grantor shall conduct drilling or reworking operations thereon with no cessation of more than sixty (60) days consecutively until production results; and, if production results, so long as such mineral is produced.
>
> Provided further that at the end of said ten-year period of reservation, if not extended as hereinabove provided, or at the termination of any extended period in case the operation has not been carried on after said ten-year period as hereinabove provided, the right to mine, produce and market said oil, gas, sulphur or other mineral shall terminate at the end of said ten

years, and the complete fee title to said lands shall thereby become vested in the United States.[1]

No drilling, reworking or other operations were conducted and no production of minerals of any kind was obtained from the lands described in Civil No. 14589 for a period of more than ten (10) years from and after July 23, 1937, and no drilling, reworking or other operations were conducted and no production of minerals of any kind was obtained from the lands described in Civil No. 14588 for a period of more than ten (10) years from and after August 30, 1939.

Defendants' interests in the oil, gas, sulphur and other minerals terminated by the terms of the reservations respectively no later than July 23, 1947, and August 30, 1949, unless Act 315 of 1940 (LSA-R.S. 9:5806) has caused the reservations of the servitudes in favor of defendants to be imprescriptible.

The Act provides:

> * * * When land is acquired by conventional deed or contract, condemnation or expropriation proceeding by the United States of America, or any of its subdivisions or agencies, from any person, firm or corporation, and by the act of acquisition, verdict or judgment, oil, gas or other minerals or royalties are reserved, or the land so acquired is by the act of acquisition conveyed subject to a prior sale or reservation of oil, gas or other mineral or royalties, still in force and effect, said rights so reserved or previously sold shall be imprescriptible.

The Facts

The pertinent facts have been stipulated and the stipulation is attached to the original of this opinion.

Contention of The Parties

The plaintiff contends that the mineral rights reserved to the former owners in the deed to the United States and to the condemnees in the condemnation proceeding ex-

[1] The act of sale contains a mineral reservation worded exactly as the above quoted reservation except for a few words not pertinent to the outcome of this case.

pired by force of their own terms and were not affected by the operation of Act 315 of 1940 (LSA-R.S. 9:5806(a)). They argue that the terms of the reservations are explicit and create servitudes that are definite in their provisions and not subject to the imprescriptible provision of Act 315 of 1940. The Government insists also that if Act 315 of 1940 is interpreted as extending the grantors' or condemnees' servitude in the minerals, it is unconstitutional (1) as impairing the obligation of contract; (2) as derogating the supreme power of the Federal Government to acquire a precise estate by condemnation or purchase; and (3) as hostile and discriminatory against the United States in the acquisition of interests in the land.

On the other hand, defendants contend that *Leiter Minerals, Inc. v. United States* (5th Cir., 1964), 329 F. 2d 85, judgment vacated sub nom. *United States v. Leiter Minerals, Inc.*, 381 U.S. 413 (1965), as moot, is dispositive of the issues involved in this litigation.

History of Leiter Minerals, Inc.

The case for declaratory judgment was brought in Plaquemines Parish by the claimant to the mineral servitude against the lessee of the United States for an interpretation of Act 315 of 1940 as it applied to deeds to the United States in which a mineral servitude was reserved. The Louisiana District Court held that Act 315 of 1940 was applicable to all prescriptions, both statutory and contractural, and held for the plaintiff. Appeal was taken from that judgment to the Supreme Court of Louisiana, and assigned to the Court of Appeals of Louisiana, Fourth Circuit, since the Supreme Court did not have jurisdiction, *Leiter Minerals, v. California Company,* 239 La. 116, 118 So. 2d 124 (1960). The Court of Appeals reversed the District Court holding that the mineral reservation in the deed to the United States was of a specified contractual duration rather than a statutory prescriptive period. *Leiter Minerals, Inc. v. California Company,* 126 So. 2d 76 (1961). The Supreme Court of Louisiana granted certiorari and reversed and set aside the judgment and dismissed the plaintiff's suit. *Leiter Minerals, Inc. v. California Co.,* 241 La. 915, 132 So. 2d 845 (1961).

Thereafter, the United States, which had not been a party to the State Court litigation, resumed its suit to

quiet title to minerals in the United States District Court for the Eastern District of Louisiana. *United States v. Leiter Minerals, Inc.*, 204 F. Supp. 560 (1962). The District Court held that the servitude created in the deed was not governed by the usual laws of prescription and Act 315 of 1940 did not apply. Plaintiff's motion for summary judgment was granted. This case was reversed in *Leiter Minerals, Inc. v. United States*, 329 F. 2d 85 (5th Cir., 1964), with Judge Gewin dissenting, stating that he agreed with the District Court. Upon petition, the Supreme Court granted certiorari and thereafter, on suggestion of counsel, vacated the judgment, remanded the case to the District Court with directions to dismiss the complaint as moot. *United States v. Leiter Minerals, Inc.*, 381 U.S. 413 (1965).

Conclusions

Clearly, the provisions of the reservations in the instant cases reveal that the parties were stipulating for a period of contractual prescription for the conditional extinguishment of the mineral servitudes. We agree with the parties that the Fifth Circuit's 2-1 decision in *Leiter Minerals*, 329 F. 2d 85, is dispositive of the issues involved in this litigation, unless the vacating of that decision by the Supreme Court, 381 U.S. 413, frees this Court to decide the Louisiana law and the federal constitutional issues as it, this Court, feels they should be decided. The main thrust of the Government's argument is that we are to decide all issues "de novo".

The procedure of vacating the judgment and dismissing the complaint is commonly used "to prevent a judgment, unreviewable because of mootness, from spawning any legal consequences." U. S. v. Munsingwear, 340 U.S. 36. This means that the vacated judgment clears the path for future re-litigation of the issues between the parties and eliminates a judgment, review of which was prevented (in Leiter Minerals) as a result of compromise. The effect of the vacated judgment may or may not free the Fifth Circuit from its 2-1 decision. Nevertheless, this Court (the Western District of Louisiana) must give to that decision stare decisis effect. Comment, Disposition of Moot Cases by the United States Supreme Court, 22 U. Chi. L. Rev. 77, 93 (1955); Granville-Smith v. Granville-Smith, 214 F. 2d 820 (3rd Cir., 1954); U.S. v. Wolfe, 232 F. Supp. 85 (1964).

Any decision by this Court which would be contrary to the Fifth Circuit decision in *Leiter Minerals* would, in my judgment, be an unwarranted attempt to usurp the authority of the appellate Court. Our conclusion is that we are obligated to follow Leiter Minerals. The dismissal of that case by the Supreme Court as moot does not constitute a cogent reason to alter that obligation.

Judgment for Defendants. Proper decree should be presented.

THUS DONE AND SIGNED in Chambers at Lake Charles, Louisiana, on this the 8th day of March, 1971.

/s/ Edwin F. Hunter, Jr.
United States District Judge

Filed:
March 9, 1971

(Title Omitted)
No. 14588

JUDGMENT

This matter came on for trial on November 30, 1970, on a Stipulation of Fact entered into by the parties and it appearing that the law and the evidence are in favor of Defendants and against Plaintiff, United States of America, for the written reasons assigned by this Court March 8, 1971,

IT IS ORDERED, ADJUDGED AND DECREED, that the complaint of the United States of America, Plaintiff, be and is hereby dismissed and the Defendants, LITTLE LAKE MISERE LAND COMPANY, INC., NORTH AMERICAN LAND COMPANY, INC., FOREST OIL COMPANY, GLADYS KELLY DUPUY, JAMES F. GAYLE, MRS. SHIRLEY GAYLE, ADMINISTRATRIX OF THE ESTATE OF W. GEDGE GAYLE, ALICE B. KELLY, NANCY WHITESIDE KELLEY, TRUSTEE: KING CORPORATION, VORIS KING, STANLEY W. KEMP, ADMINISTRATOR OF THE ESTATE OF F. A. LEMIEUX, FRANK J. LEMIEUX, GRACE MUSSER ZOOK, MABLE MUSSER POTTER, IRENE MUSSER ERWIN, MORGAN MUSSER, A. W. NOLAND, JR., MRS. B. A. MOULTER, EXECUTRIX OF THE ES-

TATE OF A. P. PUJO, C. A. KING II, WILLIS W. NOLAND, F. J. VINCENT, MARGARET H. HEARD, JOHN WATKINS HUBER, C. E. BRAZIL, LOUIE D. BARBE, EXECUTOR OF THE ESTATE OF A. M. BARBE, BARBE GODEAU, ROBERT NOLAND AND H. MOSS WATKINS, be and are hereby recognized as owners of the mineral rights reserved to said Defendants or their predecessors in title through judgment of condemnation rendered in those certain proceedings entitled "United States of America v. 2574.18 acres of land in Cameron Parish, Louisiana, Little Lake Misere Land Company, Inc., Tax Collector of Cameron Parish, North American Land Company, Inc., Bell City Drainage District of Cameron and Calcasieu Parishes," Civil Action No. 4 in the United States District Court for the Western District of Louisiana, Lake Charles Division, dated January 25, 1939, and recorded in Conveyance Book 41, page 49, under Entry No. 39771 of the Records of Cameron Parish, Louisiana, said judgment having become final and effective through a final judgment rendered by the same court August 30, 1939, and recorded in Conveyance Book 43, page 13, under Entry No. 41013 of the Records of Cameron Parish, Louisiana, which said judgments relate to and affect the following described lands situated in Cameron Parish, Louisiana:

[Description omitted.]

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the mineral rights so reserved to Defendants are and shall be imprescriptible.

All costs of this action are to be borne by Plaintiff, the United States of America.

Dated at Lake Charles, Louisiana, this 20th day of April, 1971.

/s/ Edwin F. Hunter, Jr.
United States District Judge

Filed:
Apr. 20, 1971

(Title Omitted)

No. 14588
No. 14589

NOTICE OF APPEAL

Notice is hereby given that the United States of America, the plaintiff above named, hereby appeals to the United States Court of Appeals for the Fifth Circuit from the judgments entered April 20, 1971, by the Honorable Edwin F. Hunter, District Judge, against the United States and in favor of the defendants.

Dated: June 9, 1971.

/s/ Donald E. Walter
/s/ D. H. Perkins, Jr.

Filed
June 11, 1971

(Title Omitted)

No. 14,589

ACTION TO QUIET TITLE AND FOR INJUNCTIVE RELIEF

COMPLAINT

The United States of America, by Edward L. Shaheen, United States Attorney for the Western District of Louisiana, acting under authority of the Attorney General of the United States and at the request of the Secretary of the Interior, respectfully shows to the Court:

1. This is a civil action brought by the United States to quiet title and for injunctive relief, and jurisdiction of this Court is based and predicated upon 28 U.S.C. sec. 1345.

2. The defendant Misere Oil & Gas Company, Inc., is a corporation organized and existing under the laws of the State of Louisiana and is domiciled in the Parish of Calcasieu, Louisiana.

3. The United States is the owner in fee simple, including all of the minerals and mineral rights, of the following described property, comprising approximately 10,050 acres of land situated in Cameron Parish, Louisiana:

All of Sections Thirty-Five and Thirty-Six, Township Twelve South, Range Six West.

All of Sections Thirty-one, Thirty-two, Thirty-three, Thirty-four; all of Fractional Section Thirty-five, West of Lacassine Bayou; all of Fractional Section Thirty-six, West of Lacassine Bayou; all in Township Twelve South, Range Five West.

All of Section Two, West of Lacassine Bayou; all of Sections Three, Four, Five, Six, Seven, Eight, Nine; all of Section Ten, West of Lacassine Bayou; all of Section Eleven, West of Lacassine Bayou; all of Section Fifteen, North of Lake Misere; all of Section Seventeen, North of Lake Misere; all of Section Eighteen, North of Lake Misere; all in Township Thirteen South, Range Five West, less right of way of Intracoastal Canal, all located in Parish of Cameron, all of Louisiana Meridian, together with all rights, privileges and appurtenances thereto belonging, containing ten thousand forty-eight and 01/100 acres, more or less.

4. The property described in the previous paragraph (3) was acquired by the United States by deed dated July 23, 1937, from Misere Land Company, Inc., a Louisiana corporation, to the United States, and recorded in Conveyance Book 34, page 60, under File No. 36321 of the records of Cameron Parish, Louisiana.

5. The deed of July 23, 1937, from Misere Land Company, Inc., to the United States, referred to in the previous paragraph, contains the following reservation of minerals in favor of the Misere Land Company, Inc., the Government's grantor, whose successors in interest are the defendants in this action:

[Reservation omitted.]

6. During a period of more than ten years after July 23, 1937, the date of the deed from Misere Land Company, Inc., to the United States, no drilling or reworking operations were conducted and no production of any of the minerals named in the mineral reservation set forth in the previous paragraph was obtained from the lands described in paragraph 3.

7. As a result of the failure of the Misere Land Company,

Inc., and its successors in interest to conduct operations provided for in the mineral reservation or to obtain the production of minerals within the period of ten years following the date of the deed from the Misere Land Company, Inc., to the United States, the ten-year period terminating on July 23, 1947, the mineral reservation expired on that date, and the United States immediately became the owner of the fee simple title to the lands described in paragraph 3 hereof, including all of the minerals and mineral rights therein.

8. Since the expiration or termination of the mineral reservation on July 23, 1947, and the reversion of the minerals and mineral rights to the United States as the fee owner of the property, the United States, through its mineral lessees, has been in continuous physical possession of the property described in paragraph 3 hereof, including the minerals and mineral rights, and has continued to be and is the owner of the minerals and mineral rights in said property.

9. That notwithstanding the expiration or termination of the mineral rights originally reserved in the deed of July 23, 1937, from the Misere Land Company, Inc., to the United States, the defendants wrongfully claim all of the minerals and mineral rights in said property or mineral royalty rights emanating from the original owner of the mineral reservation.

10. The United States as the owner in fee simple of the property described in paragraph 3 hereof, including all of the minerals and mineral rights, and being in possession of said lands, minerals and mineral rights, is entitled to have its title in and to the minerals and mineral rights in the property quieted in it and against any claims asserted thereto by the defendants.

11. The United States, as owner of the property in fee simple title, is also entitled to a permanent injunction against the defendants, their officers, agents, servants, employees and attorneys, and all persons in active concert or participation with them, from asserting or claiming any right, title or interest to the minerals and mineral rights in the property.

WHEREFORE, plaintiff, the United States of America, prays for judgment against the defendants as follows:

(a) Quieting title of the United States in and to all of

the minerals and mineral rights in and under the lands described in paragraph 3 hereof as against any claim and contentions on the part of the defendants;

(b) Decreeing that the United States has title to all of said minerals and mineral rights, subject only to existing oil, gas and mineral leases as granted by the United States and further decreeing that the defendants do not have any title or claim to said minerals and mineral rights;

(c) Permanently enjoining the defendants, their officers, agents, servants, employees and attorneys, and all persons in active concert or participation with them, from asserting or claiming any title to or interest in said minerals and mineral rights, and

(d) For such additional orders and decrees and such other relief as may be just and proper, together with costs.

/s/ Edward L. Shaheen
/s/ D. H. Perkins, Jr.

Filed
April 25, 1969

(Title Omitted)

No. 14,589

ANSWER

NOW INTO COURT, through undersigned counsel come MISERE OIL & GAS COMPANY, INC.; HELEN WEBER HARRIS; HELEN RICHARD NOLAND; A. W. NOLAND, JR.; HENRY G. CHALKLEY; MARY HANNAH CHALKLEY; HENRY CHALKLEY ALEXANDER; LAURA ALEXANDER LEACH; PEARL JACOBS MULLER; JANICE MULLER DAVIS; ADOLPH MARX; RUTH PERKINS KING, TESTAMENTARY EXECUTOR OF THE ESTATE OF JEAN M. KING; VORIS KING; VAN HOLMAN KING; BETSY BEE KING ROBINSON; CYRUS ARTHUR KING II; MARY KATHRYN KING; JEAN LARUE KING; GEORGE M. KING III; EDNA KING CHAPMAN; C. A. KING II, DATIVE TESTAMENTARY EXECUTOR OF THE ESTATE OF CYRUS ARTHUR KING; MILLER H. ALEXANDER; MILLER H. ALEXANDER, ADMINISTRATOR OF THE ESTATE OF GERTRUDE

C. ALEXANDER, and for answer to the plaintiff's complaint, respectfully aver:

1.

The allegations of Paragraph 1 of said complaint are admitted.

2.

The allegations of Paragraph 2 of said complaint are admitted.

3.

In answer to Paragraph 3 of said complaint, defendants admit that the United States is the owner of the surface title to the 10,050 acre tract described in said paragraph, but defendants deny that the United States has any interest in the minerals and mineral rights in said land.

4.

In answer to Paragraph 4 of said complaint, defendants admit that the United States acquired the surface rights only in the property described in Paragraph 3 of said complaint by deed therein described, but defendants deny that said deed vested in the United States any interest in the mineral rights in said land.

5.

The allegations of Paragraph 5 of said complaint are admitted.

6.

The allegations of Paragraph 6 of said complaint are admitted.

7.

The allegations of Paragraph 7 of said complaint are especially denied.

8.

In answer to Paragraph 8 of said complaint, defendants admit that the United States has been in possession of the surface of the property since July 23, 1947, but all other allegations contained in said paragraph are denied.

9.

In answer to Paragraph 9 of said complaint, defendants admit that they have been and are now claiming all of the minerals and mineral rights or the mineral royalty rights emanating from the original owners and holders of the mineral reservation, but all other allegations contained in said paragraph are denied.

10.

The allegations of Paragraph 10 of said complaint are denied.

11.

The allegations of Paragraph 11 of said complaint are denied.

FURTHER ANSWERING, your defendants aver:

12.

That as is alleged in the plaintiff's complaint, all of the minerals and mineral rights in the property described in said complaint were fully reserved to your defendants or their predecessors in title by the deed described in Paragraph 4 thereof and defendants aver that the consideration paid for the transfer evidenced by said deed did not cover the value of the mineral rights in the property transferred therein.

13.

That the properties involved in this suit were purchased for public use as a Migratory Wild Life Refuge pursuant to the provisions of the Migratory Bird Treaty, 39 Stat. 1702, the Migratory Bird Treaty Act, 40 Stat. 755, and the Migratory Bird Conservation Act, 45 Stat. 1222, and the Secretary of Agriculture was duly authorized to acquire

said lands by Title 7 of the Act of Congress approved June 15, 1935 (45 Stat. 378, 384), and in accordance with Articles 2626 to 2641, inclusive, Civil Code of Louisiana.

14.

That approximately three years after the reservation of all mineral rights by Misere Land Company, Inc., from the sale to the United States of July 23, 1937 and while said mineral reservation was still in full force and effect, the Louisiana Legislature adopted Act 315 of 1940 (LSA-R.S. 9:5806) which provided in part as follows:

> "• • • That when land is acquired by contract, condemnation or expropriation proceedings by the United States of America, or any of its subdivisions or agencies, from any person, firm or corporation, and by the act of acquisition, verdict or judgment, oil, gas, and/or other minerals or royalties are reserved, or the land so acquired is by the act of acquisition conveyed subject to a prior sale or reservation of oil, gas and/or other minerals or royalties, still in force and effect, said rights so reserved or previously sold shall be imprescriptible."

15.

That the mineral reservation incorporated in the deed in favor of your defendants and their predecessors in title clearly established a mineral servitude of uncertain and indefinite duration; and defendants aver therefore that as a result of the adoption of said Act 315 of 1940 while the mineral servitude was still in effect, the mineral rights so reserved were and are now imprescriptible.

16.

That at all times from the original reservation provided for in said deed and particularly subsequent to July 23, 1947 they have continued to assert their title to the mineral rights so reserved and have executed various contracts affecting these rights.

WHEREFORE, defendants pray for judgment against the plaintiff, the United States of America, as follows:

(a) Decreeing that your defendants have title to all of the minerals and mineral rights in the lands de-

scribed in Paragraph 3 of plaintiff's complaint and that said mineral rights are and shall remain imprescriptible.

(b) Quieting the title of your defendants to all of the minerals and mineral rights in said lands as against any claims or contentions of the United States of America.

(c) For such additional orders and decrees and such other relief as may be just and proper, together with costs.

By their attorneys,
LISKOW & LEWIS
/s/ Austin W. Lewis
AUSTIN W. LEWIS
GENE W. LAFITTE
RICHARD E. GERARD

Filed
July 30, 1969

(Title Omitted)

No. 14,589

MOTION FOR SUMMARY JUDGMENT

Defendants move the Court to enter, pursuant to Rule 56 of the Federal Rules of Civil Procedure, a Summary Judgment in Defendants' favor dismissing the action of Plaintiff and decreeing minerals and mineral rights reserved in act of sale from Misere Land Company, Inc., to The United States of America July 23, 1937, to be still effective for the reason that based on the stipulation of fact heretofore entered into by the parties and filed in this cause, there is no genuine issue as to any material fact that the Defendants are entitled to judgment in their favor as a matter of law.

Respectfully submitted,
LISKOW & LEWIS
By /s/ Austin W. Lewis
AUSTIN W. LEWIS
GENE W. LAFITTE
RICHARD E. GERARD

Filed
Aug. 5, 1970

(Title Omitted)

No. 14,589

JUDGMENT

This matter came on for trial on November 30, 1970, on a Stipulation of Fact entered into by the parties and it appearing that the law and the evidence are in favor of Defendants and against Plaintiff, United States of America, for the written reasons assigned by this Court March 8, 1971,

IT IS ORDERED, ADJUDGED AND DECREED that the complaint of the United States of America, Plaintiff, be and is hereby dismissed and the Defendants, MISERE OIL & GAS COMPANY, INC., HELEN WEBER HARRIS, HELEN RICHARD NOLAND, A. W. NOLAND, JR., HENRY G. CHALKLEY, MARY HANNAH CHALKLEY, HENRY CHALKLEY ALEXANDER, LAURA ALEXANDER LEACH, PEARL JACOBS MULLER, JANICE MULLER DAVIS, ADOLPH MARX, RUTH PERKINS KING, TESTAMENTARY EXECUTOR OF THE ESTATE OF JEAN M. KING, VORIS KING, VAN HOLMAN KING, BETSY BEE KING ROBINSON, CYRUS ARTHUR KING II, MARY KATHRYN KING, JEAN LARUE KING, GEORGE M. KING, III, EDNA KING CHAPMAN, C. A. KING II, DATIVE TESTAMENTARY EXECUTOR OF THE ESTATE OF CYRUS ARTHUR KING, MILLER H. ALEXANDER, MILLER H. ALEXANDER, ADMINISTRATOR OF THE ESTATE OF GERTRUDE C. ALEXANDER, be and are hereby recognized as owners of the mineral rights reserved to Misere Land Company, Inc., in act of sale to the United States of America dated July 23, 1937, recorded in Conveyance Book 34, page 60, under File No. 36321 of the Records of Cameron Parish, Louisiana, relating to and affecting the following described lands situated in Cameron Parish, Louisiana:

[Description omitted.]

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the mineral rights so reserved by Misere Land Company, Inc., and now owned by Defendants are and shall be imprescriptible.

All costs of this action are to be borne by plaintiff, the United States of America.

Dated at Lake Charles, Louisiana, this 20th day of April, 1971.

/s/ Edwin F. Hunter, Jr.
District Judge

Filed
April 20, 1971

(Title Omitted)
No. 14,589
14,588

MOTION TO EXTEND TIME WITHIN WHICH TO FILE RECORD ON APPEAL

NOW INTO COURT, through undersigned counsel, comes Plaintiff-Appellant herein and moves for an extension of fifty (50) days from July 21, 1971, the date on which the record on appeal is due to be filed with the Fifth Circuit Court of Appeals, because the Reporter who will prepare the record on appeal for the Clerk, on account of the press of accumulated prior business, will be unable to complete the transcript of appeal and file the same within forty (40) days as required by Rule 73(g) of the Federal Rules of Civil Procedure.

Signed at Shreveport, Louisiana, this 13th day of July, 1971.

DONALD E. WALTER,
United States Attorney

By /s/ D. H. Perkins, Jr.
D. H. PERKINS, JR.
Assistant United States Attorney

ORDER

The foregoing motion being considered:

IT IS ORDERED that Plaintiff-Appellant, be and they are hereby granted an extension of fifty (50) days from the 21st day of July, 1971, within which to file the record on appeal with the United States Circuit Court of Appeals for the Fifth Circuit.

Thus done and signed at Shreveport, Louisiana, this 13th day of July, 1971.

/s/ Ben C. Dawkins, Jr.
BEN C. DAWKINS, JR.
United States District Judge

Filed
July 13, 1971

SUPREME COURT OF THE UNITED STATES

No. 71-1459

UNITED STATES, PETITIONER

v.

LITTLE LAKE MISERE LAND COMPANY, INC., ET AL.

ORDER ALLOWING CERTIORARI. Filed October 10, 1972.

The petition herein for a writ of certiorari to the United States Court of Appeals for the Fifth Circuit is granted.

☆ U.S. Government Printing Office: 1972—479-687/263

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43 C.F.R. (April 1, 1964 Supp.) 3120.3–3 15
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Miscellaneous:
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In the Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-

UNITED STATES OF AMERICA, PETITIONER

v.

LITTLE LAKE MISERE LAND COMPANY, INC., ET AL.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

The Solicitor General, on behalf of the United States of America, petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit entered in this case on December 30, 1971.

OPINIONS BELOW

The opinion of the district court (App. A, *infra,* pp. 1a–7a) is not reported. The opinion of the court of appeals (App. B. *infra,* pp. 15a–18a) is reported at 453 F.2d 360.

JURISDICTION

The judgment of the court of appeals (App. C, *infra,* p. 19a) was entered on December 30, 1971. On March 29, 1972, Mr. Justice Powell extended the time for filing a petition for a writ of certiorari to and

including April 28, 1972, and on April 20, 1972, he granted a further extension to and including May 8, 1972. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

Pursuant to the Migratory Bird Conservation Act, the United States acquired land in Louisiana for a wildlife refuge by deed and by condemnation. The mineral rights were reserved to the former owners for a ten-year period (subject to extension if certain conditions regarding exploration and production were met), after which such rights were to vest in the United States. The ten-year period expired without the conditions for extension being met. The claim sustained below is that an intervening statute of Louisiana (Act 315 of 1940), passed after the United States acquired the land in question and providing that mineral rights reserved in land conveyances to the United States shall be "imprescriptible," had the effect of extending indefinitely the former owners' mineral reservations.

The question presented on these facts is whether the Louisiana statute, if applicable, can constitutionally be applied to defeat the government's valuable right to the minerals. Included subsidiary questions are:

1. Whether Louisiana Act 315, as construed and applied by the court below, is invalid under the Supremacy Clause, the Property Clause, the Contract Clause or the Fourteenth Amendment of the Federal Constitution.

2. Whether federal law, rather than state law, governs the property rights of the United States in lands acquired under the Migratory Bird Conservation Act.

3. Whether the reservations of mineral rights in question, construed under state or federal law, are within the provisions of Louisiana Act 315.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

Constitution of the United States:

> Article I, Section 10, clause 1:
>
> No State shall * * * pass any * * * Law impairing the Obligation of Contracts * * * .
>
> Article IV, Section 3, clause 2:
>
> The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State.
>
> Article VI, clause 2:
>
> This Constitution, and the laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any thing in the Constitution or Laws of any State to the Contrary notwithstanding.
>
> Fourteenth Amendment, Section 1:
>
> * * * nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Act 315, Louisiana Statutes of 1940 (LSA–RS 9:5806) (Cum. Supp.) provides in pertinent part:

> A. When land is acquired by conventional deed or contract, condemnation or expropriation proceedings by the United States of America, or any of its subdivisions or agencies, from any person, firm or corporation, and by the act of acquisition, order or judgment, oil, gas or other minerals or royalties are reserved, * * * the rights so reserved * * * shall be imprescriptible.
>
> * * * * *

The pertinent provisions of the Migratory Bird Conservation Act of February 18, 1929 (45 Stat. 1222, as amended, 16 U.S.C. 715, *et seq.*) and of Act No. 12, Louisiana Statutes of 1892, are set forth in Appendix E, *infra*, pp. 38a–42a.

STATEMENT

The United States initiated this litigation to quiet title in it to lands in Louisiana which it had purchased or condemned pursuant to the Migratory Bird Conservation Act for the Lacassine Wildlife Refuge.[1] The conveyances to the federal government reserved the mineral rights to the former owners. By their terms, the reservations subsequently expired and the mineral rights vested in the United States. The former owners or their successors in interest (collectively referred

[1] The United States brought two separate suits for this purpose, under 28 U.S.C. 1345, which were consolidated pursuant to Rule 42(a), Fed. R. Civ. P. (App. A, *infra*, pp. 7a–8a).

to herein as Lake Misere) claimed that Louisiana Act 315 made the provisions for the extinguishment of the reservations inoperative, and that therefore they owned the mineral rights. The district court concluded that the issues involved had been resolved in favor of Lake Misere's claim in *Leiter Minerals, Inc.* v. *United States*, 329 F. 2d 85 (C.A. 5), certiorari granted and judgment vacated with directions to dismiss as moot, 381 U.S. 413. Accordingly, it granted summary judgment for Lake Misere. The court of appeals affirmed *per curiam* on the authority of its *Leiter Minerals* decision.[2]

1. *The present case.* The material facts were stipulated in the district court.[3] The United States acquired approximately 12,625 acres of land in Cameron Parish, Louisiana, by purchase on July 23, 1937, and by a condemnation judgment entered on January 25, 1939 (App. A, *infra*, pp. 7a–8a). The deed of purchase reserved "unto [the] vendor * * * all the oil, gas, sulphur and other minerals in, or on under said land, * * * for a term of ten years from the date [hereof] * * * and as long thereafter as * * * mineral is produced from said land, or so long thereafter as vendor shall conduct drilling or reworking operations * * * " (*id.* at pp. 9a–10a). It was provided

[2] The government brought the present suit in an effort to resolve the issues which were left open when *Leiter Minerals* became moot. Since the decisions in this case were based on the court of appeals' decision in *Leiter Minerals*, that litigation is discussed in some detail at pp. 7–10, *infra*, and the court of appeals' opinion in that case (329 F. 2d 85) is set forth in App. D, *infra*, pp. 20a–37a.

[3] The stipulation is appended to the district court's opinion (App. A, *infra*, pp. 7a–14a).

that "at the end of said ten-year period of reservation, if not extended * * *," the reservation of minerals "shall terminate * * *, and the complete fee title to said lands shall thereby become vested in the United States" (*ibid.*). The judgment of condemnation contained a mineral reservation in favor of the prior owners which was identical in relevant part (*id.* at pp. 11a–12a).

None of the conditions that would extend the term of the reservations occurred during the ten-year period (App. A, *infra,* pp. 10a, 12a). In 1955, after the mineral rights had vested in the United States under the terms of the reservations, the United States issued oil and gas leases covering the lands in question. Lake Misere continued to claim the mineral rights, however, and executed various contracts in which it asserted that it owned such rights (*id.* at pp. 12a–13a).

The district court found that the provisions of the reservations concerning the period thereof indicated that "the parties were stipulating for a period of contractual prescription for the conditional extinguishment of the mineral servitudes" (App. A, *infra,* p. 6a). It concluded that "the Fifth Circuit's 2–1 decision in *Leiter Minerals,* 329 F. 2d 85, is dispositive of the issues involved in this litigation," and that, despite the fact that the Supreme Court had vacated that decision, it was "obligated to follow Leiter Minerals" (*id.* at p. 6a). Since *Leiter Minerals* had determined that Louisiana Act 315 made prior contractual prescriptions ineffectual to extinguish a mineral reser-

vation, the court sustained Lake Misere's claim and entered summary judgment for it.

The court of appeals affirmed the district court's judgment "on the basis of the principles enunciated * * * in *Leiter*" (App. B, *infra*, p. 17a). It rejected the government's contentions that Louisiana Act 315 as construed and applied here was unconstitutional in that it impaired obligations of contract, derogated from the federal government's supreme power to acquire a precise estate by condemnation or by purchase, and discriminated against the United States in its land acquisitions (*id.* at pp. 17a–18a).

2. *Leiter Minerals.* The relevant facts in the present case closely parallel those in *Leiter Minerals*, and the legal issues presented there were the same as those involved here.

In 1938, the United States purchased certain lands in Plaquemines Parish, Louisiana, for a wildlife refuge under the provisions of the Migratory Bird Conservation Act. The deed of purchase contained a mineral reservation similar to the reservations in the present case, and, as here, the reservation expired according to its terms and the mineral rights vested in the United States. Both the United States and the former owner (Leiter) issued oil and gas leases covering the lands in issue.

The Leiter interests, claiming that they owned the mineral rights, brought suit in a Louisiana state court against the government's lessees. This claim was based on the provision of Louisiana Act 315 (*supra*, p. 4), that "when land is acquired * * * by the United States * * * [and] minerals or royalties are reserved * * *

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the rights so reserved * * * shall be imprescriptible," which, it was contended, had the effect of extending Leiter's mineral reservation in perpetuity. The United States then instituted an action to quiet title in federal court. The federal district court, at the government's request, enjoined the state court proceedings (204 F. Supp. 560 (E.D. La.)), and the court of appeals affirmed the injunction (224 F. 2d 381 (C.A. 5)). This Court granted certiorari; it modified the injunction "to permit an interpretation of the state statute [Louisiana Act 315] to be sought * * * in the state court," and with that change, affirmed (352 U.S. 220, 230).

A declaratory judgment proceeding was initiated in state court for this purpose, and ultimately reached the Supreme Court of Louisiana (*Leiter Minerals, Inc.* v. *California Co.*, 241 La. 915, 132 So. 2d 845). That court held that Louisiana Act 315 applies retroactively to mineral reservations outstanding when the statute was enacted (in 1940), although they were created before that date, and applies "to prescription whether established by statute or by contract" (241 La. at 940, 132 So. 2d at 854). The statute controls, however, only with respect to reservations establishing a mineral servitude "of uncertain and indefinite duration"; if the servitude is "for a certain time or of specified duration * * * then Act 315 of 1940 is not applicable * * * " (241 La. at 938, 935, 132 So. 2d at 853, 852). The court summarized its view of the Act as follows (241 La. at 942–943, 132 So. 2d at 854–855):

> First, that if the reservation in the Leiter deed is construed as establishing a mineral servitude for a definite, fixed, and specified time which has elapsed, then Act 315 of 1940 is not applicable and cannot be constitutionally applied; and second, that if the reservation is construed as [1] not establishing a servitude for a fixed, definite and certain time, and if it is decided [2] that the provisions of the reservation show that the parties were stipulating for a period of contractual prescription for the conditional extinguishment of the mineral servitude created, then Act 315 of 1940 is applicable and constitutional. The interpretation of the contract [the reservation] is for the United States courts.

The federal district court (Judge J. Skelly Wright) then decided the merits of the government's quiet title action (204 F. Supp. 560). It held that the reservation "provides a definite term" for the mineral servitude created thereby (*id.* at 567). Thus, "[u]nder the ruling of the Louisiana Supreme Court, * * * the reservation was not affected by Act 315 of 1940," and "the servitude expired by its own terms and the mineral rights reverted to the United States" (*ibid.*). It was, accordingly, unnecessary for the court to resolve the government's contentions regarding the constitutionality of Act 315.

The court of appeals reversed (329 F. 2d 85; App. D, *infra*). It rejected the government's contention that federal law controlled the rights of the United States under the reservation, and held, instead, that those rights were to be determined by reference to the law of Louisiana. It was the court's opinion that the Lousiana Supreme Court had indicated that

"Leiter's servitude was one of indefinite duration," and it agreed with that view (App. D, *infra,* p. 29a). Under state law, therefore, the reservation "provide[d] for a contractual prescription for the conditional extinguishment of the mineral servitude which was rendered inoperative by the Louisiana statutes" (*id.* at p. 35a). As to the government's contention that as so construed the Louisiana statute unconstitutionally impaired its contract, the court said that the discussion of that matter in its prior decision in *United States* v. *Nebo Oil Co.,* 190 F. 2d 1003, and in the Louisiana Supreme Court's *Leiter* opinion (241 La. at 941–942, 132 So. 2d at 854) made it "unnecessary further to labor" this point. Judge Gewin dissented, and would have affirmed the district court's ruling for the reasons set forth in its opinion (App. D, *infra,* pp. 36a–37a).

REASONS FOR GRANTING THE WRIT

The decision below raises important questions regarding the interrelationship of state and federal law in the federal government's land transactions, the applicability of the Louisiana statute (Act 315) to the facts of this case, and the constitutionality of the statute as applied. The court of appeals, adhering to the views expressed in its *Leiter Minerals* decision, held that the government's rights under the mineral reservations in question are determined by state rather than federal law, and that Act 315 applies to the reservations as construed under state law to make their provisions for extinguishment of the reserva-

tions inoperative.[4] The court further ruled that Act 315 was not unconstitutional as thus applied. These several holdings are destructive of settled principles of federal land law and of constitutional law reflected in decisions of this Court and of other courts of appeals. If permitted to stand, the decision would have far-reaching effects on valuable mineral rights in Louisiana which the United States has acquired, and (in principle) on other federal land interests and transactions.

1. The chief questions requiring resolution by this Court are the constitutional issues presented by the application of Louisiana Act 315 to abrogate the rights acquired by the United States under the express terms of the mineral reservations. In our view, the decision below offends the Constitution for three independent reasons. First, the decision violates the Property and Supremacy Clauses by subjecting the interests of the United States in land to disposition by a State and to the idiosyncracies of local land law. Second, Act 315, as applied, impairs the obligations of contracts in violation of Article I, Sec. 10. Third, the statute impermissibly singles out the United States for hostile discrimination in the acquisition of interests in lands.

[4] In Louisiana, there can be no separate estate in minerals, apart from ownership of the surface. The most that may be granted (or reserved) is a right to explore for and extract the minerals—a so-called "servitude"—which expires automatically by the force of "prescription" if it is not exercised for 10 years. Thus, under state law private parties cannot validly stipulate that a mineral interest shall survive more than a decade of inactivity. The effect of Act 315 is to suspend the operation of the law of prescription when the landowner sells to the United States and reserves the minerals; his right to extract the minerals is made "imprescriptible."

A. The Property Clause vests in Congress the "Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States * * *." Article IV, Sec. 3, cl. 2 (*supra,* p. 3). The Supremacy Clause prescribes that the Constitution and the laws and treaties duly made by the United States "shall be the supreme Law of the Land * * *." Article VI, cl. 2 (*supra,* p. 3). These provisions preclude application of Louisiana Act 315 in this case to limit or change the rights of the United States in lands acquired by it.

The United States acquired the lands in issue here pursuant to federal statutes—the Migratory Bird Conservation Act (App. E, *infra,* pp. 38a–42a)—empowering it to do so in furtherance of a national program for the protection of wildlife. Although these statutes prohibit acquisitions "unless the State in which the area lies shall have consented by law to the acquisition by the United States of lands in that State" (*id.* at p. 40a), Louisiana had given its general consent to acquisitions by the federal government in 1892 (Act No. 12, Louisiana Statutes of 1892, App. E, *infra,* pp. 42a). It was contemplated that acquisitions under the Migratory Bird Conservation Act might involve reservations and other encumbrances in favor of the former owner (see Sec. 715e of the Act, App. E, *infra,* pp. 39a–40a); indeed, the Act was amended to make it clear that reservations could be set forth in the conveyance. See H. Rep. No. 886, 74th Cong., 1st Sess., p. 2 (1935).

There is no doubt that the conveyances to the government in this case, which contained carefully worded

mineral reservations specifying, *inter alia,* the circumstances in which the mineral rights would vest in the United States (see *supra,* pp. 5–6), were proper in all respects. The lands thus became part of the federal domain, and thereby subject to the plenary and exclusive control of Congress under the Property Clause. See *Ivanhoe Irrigation District* v. *McCracken,* 357 U.S. 275, 294–295; *Alabama* v. *Texas,* 347 U.S. 272, 273–274; *United States* v. *San Francisco,* 310 U.S. 16, 29–30; *Utah Power & Light Co.* v. *United States,* 243 U.S. 389, 404–405. After that, only the federal government could make rules and regulations with respect thereto, and state law could not infringe on that power. *United States* v. *Allegheny County,* 322 U.S. 174, 182–183. The court below, however, held that a state statute enacted several years subsequent to the conveyances to the United States governs the federal government's property rights. Under the court's holding, the Louisiana statute reduces the property interests that the United States received under the conveyances by abrogating the agreed terms of the reservations. This plainly constitutes a disposition of federal property by the State—a result squarely in conflict with the Property Clause, which confers on Congress, rather than the States, the "Power to dispose of * * * the Territory or other Property belonging to the United States * * *."

Moreover, the decision below conflicts with the statutory scheme under which the government acquired these lands. While reservations like those involved here are permitted, the Migratory Bird Conservation Act provides that such reservations "shall

be subject to rules and regulations prescribed by the Secretary of the Interior," and "shall be subordinate to and subject to such rules and regulations as are set out in [the conveyance] * * * or, if deemed necessary by the Secretary of the Interior, to such rules and regulations as may be prescribed by him from time to time" (Sec. 715e of the Act, App. E, *infra,* pp. 39a–40a). This leaves no room for state regulation. Rather, Congress intended that if reservations were used in conveyances to the United States, they should have federally-defined consequences without regard to the vagaries of state law.[5] The Supremacy Clause forbids the application of the Louisiana statute in these circumstances. See *Ivanhoe Irrigation District* v. *McCracken, supra,* 357 U.S. at 295; *California Commission* v. *United States,* 355 U.S. 534, 544; *United States* v. *Allegheny County, supra,* 322 U.S. at 182–183; cf. *Paul* v. *United States,* 371 U.S. 245.[6]

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[5] Section 715f of the Act, specifying that the states must give their consent before the United States can make acquisitions (App. E, *infra,* p. 40a), does not indicate an intention to subject the acquisitions to the peculiarities of local land law. As already pointed out (*supra,* p. 12), Louisiana has consented to federal acquisitions. Having done so, the state has no further power with respect to acquisitions made as authorized by federal law. See the district court's opinion in *Nebo Oil* (90 F. Supp. 73, 89–92 (W. D. La.)), reviewing the long-standing position of federal officials that state law no longer applies to lands acquired by the federal government for forest purposes.

[6] Placing the responsibility in the Secretary of the Interior to determine whether to use reservations and, if so, what they should provide, gives federal authorities the flexibility needed to assure that land requirements for projects can be met. This

B. The Contract Clause specifies that no State shall pass any law "impairing the Obligation of Contracts." Article I, Sec. 10, cl. 1 (*supra*, p. 3). Louisiana Act 315, as applied below, abrogates the express terms in the conveyances for the extinguishment of the mineral reservations. This clearly impairs the obligation of the government's contracts.

The deed of purchase and the condemnation judgment in this case are unambiguous: the former owner retained a right to explore for and extract the minerals, and that right would expire in 10 years unless certain requirements had been met to extend the term. Those requirements were not met, and under the terms of the conveyances the mineral rights which the

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may mean, as in the present case, that the government must settle for only the surface rights temporarily, with the mineral rights reserved to the former owner for a specified term. This form of reservation accommodates the interests of both seller and buyer. The former often wants an opportunity to explore for minerals, while the latter may be willing to forego the mineral rights for a specified time to reduce purchase costs. The United States uses a similar provision fixing a cut-off date for the period in which lessees of federal lands can explore for minerals (see the Mineral Leasing Act of 1920, as amended, 41 Stat. 437, 443, 30 U.S.C. 226). The restrictions which the reservations impose on the rights of the former owners to extract minerals are all the more important in this case. The lands were acquired for and are being used as a game refuge, and, unless carefully regulated, mineral development might well pose grave threats to this use. Compare 43 C.F.R. (April 1, 1964 Supp.) 3120.3–3, under which the leasing of refuge lands is generally barred. It is thus important to implementation of the policy objectives of the Migratory Bird Conservation Act that mineral reservations in government acquisitions of lands for wildlife refuges be limited to their express terms, rather than expanded, as under the decision below, by state statute.

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former owners had reserved "terminate[d]" and "the complete fee title to said lands * * * [did] thereby become vested in the United States" (*supra*, p. 6).[7]

The property interest thus provided in favor of the United States had a double benefit. Not only would the right to the minerals fully vest in the government if the former owners did not satisfy the conditions set; equally important, the United States would then be secure against any disturbance in its exclusive possession of these lands for use as a game refuge. The United States bargained for this provision and it was clearly agreed to in the conveyances and thus reflected in the consideration paid by the United States to the former owners. Yet the court below, as it did in *Leiter*, ruled that the later-enacted Louisiana statute effectively erased this provision by rendering it inoperative. That result, we submit, violates the guarantee of the Contract Clause. See *W. B. Worthen Co.* v. *Thomas*, 292 U.S. 426; *Pennsylvania Coal Co.* v. *Mahon*, 260 U.S. 393; *Barnitz* v. *Beverly*, 163 U.S. 118. Compare *El Paso* v. *Simmons*, 379 U.S. 497; *Home Building & Loan Ass'n.* v. *Blaisdell*, 290 U.S. 398.

C. Louisiana Act 315 as applied below singles out the United States and its lessees for hostile discrimination in the acquisition of interests in land. Although others acquiring land can specify and pay for

[7] Thus, here as in *Leiter Minerals*, the government's property interest in the mineral rights flows directly from the conveyances, in contrast to the situation in the court of appeals' earlier decision in *Nebo Oil*, on which that court mistakenly relied in its opinion in *Leiter Minerals* (see *supra*, p. 10).

a period of contractual prescription for mineral reservations, the United States cannot. As the federal district court pointed out in *Leiter Minerals* (204 F. Supp. at 563), "this discrimination directed against the federal government and its lessees" raises a substantial question under the Equal Protection Clause of the Fourteenth Amendment.

There is no rational basis for drawing the distinction made in Act 315. The Louisiana Supreme Court in its *Leiter* decision (241 La. at 932–934, 132 So. 2d at 851–852) explained that the purposes of the Act were to eliminate difficulties which the federal government had encountered in acquiring lands by permitting its grantors to reserve the minerals without application of the state prescription statute, and to retain state control over the minerals so that the state could tax and apply its conservation measures to them. The statute goes too far as concerns the first matter; while it frees the United States and its grantors from statutory prescription, it also bars prescription by contract. There is no reason why the United States should not be allowed to contract for prescription if it wishes, like any other vendee. Nor does the Act really serve the other suggested objects, revenue and conservation. The United States is not prohibited from acquiring mineral rights, but instead only from acquiring them under a contract which gives the former owner an initial period for exploration and production—a type of contract designed to encourage exploration of the minerals by the former

owner, who would be liable to taxation and state conservation regulations.*

To be sure, there are no federal appellate decisions holding that the United States is a person entitled to the protections of the Fourteenth Amendment. Indeed, this Court characterized this proposition as "somewhat dubious" (*United States* v. *Burnison,* 339 U.S. 87, 95). But it is well established that a State cannot discriminate against federal interests (including federal lessees), and that, we submit, is clearly the result of the decision below. See, *e.g., Moses Lake Homes* v. *Grant County,* 365 U.S. 744.

2. The decision below is disturbing as a precedent regarding the property interests the federal government has in lands which it owns. By reaffirming *Leiter Minerals,* the court also reaffirmed the proposition there expressed (329 F. 2d at 90) that "State law must govern in the absence of a federal statute making federal law applicable." Thus, unless Congress explicitly provides otherwise, each state is free not only to impose whatever restrictions it will on the manner and extent of land acquisitions the national government can make, but also to reduce the federal government's interest in property already acquired by altering local land laws. Under this view

* The fact that mineral reservations in conveyances to agencies of the state government are also made imprescriptible (Act 278, Louisiana Statutes of 1958 (LSA–RS 9:5806B) (Cum. Supp.)) does not, we submit, support the "classification" of the United States under Act 315. While the State may be entitled to "discriminate" against itself in legislating with respect to its own agencies, that should not mean that it has the right to discriminate in applying the legislation to others.

all manner of crippling restrictions on federal projects might result, and at all events the wide disparity in local law would create serious practical problems.

As discussed above, the United States, "exercising its constitutional functions," acquired the lands in question in accordance with federal statutes empowering it to do so; hence "[t]he validity and construction of [its] contracts"—in this case the conveyances containing the reservations—and "their consequences on the rights and obligations of the parties, the titles or liens which they create or permit, all present questions of federal law not controlled by the law of any State." *United States* v. *Allegheny County, supra,* 322 U.S. at 183; see also *Ivanhoe Irrigation District* v. *McCracken, supra,* 357 U.S. at 289; *Clearfield Trust Co.* v. *United States,* 318 U.S. 363, 366. The decision that state law controls in this case is contrary to these well-settled principles.

This is especially so as regards lands which the United States acquired by condemnation. "Condemnation involves essential governmental functions. * * * [W]here essential interests of the Federal Government are concerned, federal law rules unless Congress chooses to make State laws applicable * * *." *United States* v. *93.970 Acres,* 360 U.S. 328, 332–333. Similarly, the estates and interests created by declarations of taking are to be determined by federal law. See, *e.g., United States* v. *Pinson,* 331 F. 2d 759 (C.A. 5); *Bumpus* v. *United States,* 325 F. 2d 264 (C.A. 10); *United States* v. *Certain Interests in Property, etc.,* 271 F. 2d 379 (C.A. 7). Since Congress has not made

state law applicable here, there is no basis for depending on state law to define, or for permitting the state to change, the government's interests here.[9]

3. The decision below will affect a wide range of interests (including very valuable mineral interests) in federally-owned lands. The mineral rights underlying 12,625 acres of land are involved in this litigation alone. Mineral leases have been granted by the government on these lands. While no minerals have yet been produced, presumably there are indications of valuable mineral deposits.

But the significance of the case does not end with the land in issue here. The United States has acquired approximately 1,000,000 acres of land in Louisiana. At present, 560 mineral (chiefly oil and gas) leases have been issued covering 330,261 acres of such land. The government's interest under these leases is worth many millions of dollars. Although there are no readily available records indicating precisely the extent to which mineral reservations similar to the ones here were used in acquiring these lands, federal

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[9] The courts below, apparently on the authority of the Fifth Circuit's *Leiter* opinion, characterized the mineral reservations in the conveyances as providing for a contractual prescription, rather than establishing a mineral servitude for a specified time (App. A, *infra*, p. 6a; App. B, *infra*, p. 17a). Act 315 thus applied under the Louisiana Supreme Court's interpretation of it, extending indefinitely the reservations by making them "imprescriptible." We submit that this construction of the reservations, whether federal or state law applies, is incorrect as shown by the federal district court's opinion in *Leiter* (see 204 F. Supp. at 565–567). While we do not contend that this issue is sufficiently important independently to warrant certiorari, we have included it in the questions presented in order to bring the case before this Court in its full legal context.

officials advise that such reservations were frequently employed. The mineral rights of the United States in all lands acquired with such reservations may be adversely affected by the decision below.

Moreover, the effect of the decision is not confined to Louisiana or to mineral rights. The United States has acquired approximately 2,078,000 acres of land under the Migratory Bird Conservation Act, situated in all but four States. Many additional millions of acres have been acquired in all of the States for national forests under the Weeks Law (Act of March 1, 1911, 36 Stat. 961), which closely parallels the Migratory Bird Conservation Act. The ruling that interests acquired by the federal government are to be measured in accordance with the vagaries of local property laws and are to be subject to revision by the States may adversely affect the title of the United States to many of such lands.

CONCLUSION

For the reasons stated, the petition for a writ of certiorari should be granted.

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APPENDIX A

In the United States District Court for the Western District of Louisiana, Lake Charles Division

Civil Action No. 14,588

UNITED STATES OF AMERICA

vs.

LITTLE LAKE MISERE LAND COMPANY, INC., ET AL

Civil Action No. 14,589

UNITED STATES OF AMERICA

vs.

MISERE OIL & GAS COMPANY, INC., ET AL

HUNTER, Judge: Pursuant to Rule 42(a), Federal Rules of Civil Procedure, these actions, brought by the United States to quiet title to real property in Cameron Parish, in the State of Louisiana, were consolidated. Title to the property, described in detail in the complaints, was acquired by the United States in one instance (Civil Action No. 14589) by purchase on July 23, 1937, and in the other (Civil Action No. 14588) by condemnation action and judgment entered August 30, 1939. The acquisitions were for the purpose of creating a migratory bird sanctuary in accordance with the provisions of the Migratory Bird Treaty, 39 Stat. 1702 (1916), the Migratory Bird Treaty Act, 40 Stat. 755 (1918), 16 U.S.C.A. § 703, and the Migratory Bird Conservation Act, 45 Stat. 1222 (1929), 16

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U.S.C.A. § 715(a) through (e); and Articles 2626 through 2641, inclusive, Civil Code of Louisiana and 28 La. Stat. Ann. Rev. Stat. Title 52. The lands involved form a part of the Lacassine Wildlife Refuge.

The land was acquired subject to reservations of oil, gas, sulphur or other minerals. The judgment of condemnation contained the following reservation of minerals and mineral rights in favor of the owners of the property:

> Reserving unto the grantor, its successors, legal representatives and assigns, and specifically excepting from this acquisition, all the oil, gas, sulphur and other minerals in, on or under said land, together with the right of investigating, exploring, prospecting, drilling and mining for and producing said oil, gas, sulphur and other minerals, laying pipelines, building tanks, power stations, telephone lines and other structures, thereon to produce, save, take care of, treat, store, transport and manufacture said minerals and housing the employees necessary for said purposes; which rights shall remain in force for a term of ten (10) years from the date of vesting of title in the United States and as long thereafter as oil, gas, sulphur or other mineral is produced from said land, or so long thereafter as grantor shall conduct drilling or reworking operations thereon with no cessation of more than sixty (60) days consecutively until production results; and, if production results, so long as such mineral is produced.
>
> Provided further that at the end of said ten-year period of reservation, if not extended as hereinabove provided, or at the termination of any extended period in case the operation has not been carried on after said ten-year period as hereinabove provided, the right to mine, produce and market said oil, gas, sulphur or other mineral shall terminate at the end of said ten

> years, and the complete fee title to said lands shall thereby become vested in the United States.[1]

No drilling, reworking or other operations were conducted and no production of minerals of any kind was obtained from the lands described in Civil No. 14589 for a period of more than ten (10) years from and after July 23, 1937, and no drilling, reworking or other operations were conducted and no production of minerals of any kind was obtained from the lands described in Civil No. 14588 for a period of more than ten (10) years from and after August 30, 1939.

Defendants' interests in the oil, gas, sulphur and other minerals terminated by the terms of the reservations respectively no later than July 23, 1947, and August 30, 1949, unless Act 315 of 1940 (LSA–R.S. 9:5806(a)) has caused the reservations of the servitudes in favor of defendants to be imprescribtible.

The Act provides:

> * * * When land is acquired by conventional deed or contract, condemnation or expropriation proceeding by the United States of America, or any of its subdivisions or agencies, from any person, firm or corporation, and by the act of acquisition, verdict or judgment, oil, gas or other minerals or royalties are reserved, or the land so acquired is by the act of acquisition conveyed subject to a prior sale or reservation of oil, gas or other mineral or royalties, still in force and effect, said rights so reserved or previously sold shall be imprescribtible.

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[1] The act of sale contains a mineral reservation worded exactly as the above quoted reservation except for a few words not pertinent to the outcome of this case.

THE FACTS

The pertinent facts have been stipulated and the stipulation is attached to the original of this opinion.

CONTENTION OF THE PARTIES

The plaintiff contends that the mineral rights reserved to the former owners in the deed to the United States and to the condemnees in the condemnation proceeding expired by force of their own terms and were not affected by the operation of Act 315 of 1940 (LSA–R.S. 9:5806(a)). They argue that the terms of the reservations are explicit and create servitudes that are definite in their provisions and not subject to the imprescriptible provision of Act 315 of 1940. The Government insists also that if Act 315 of 1940 is interpreted as extending the grantors' or condemnees' servitude in the minerals, it is unconstitutional (1) as impairing the obligation of contract; (2) as derogating the supreme power of the Federal Government to acquire a precise estate by condemnation or purchase; and (3) as hostile and discriminatory against the United States in the acquisition of interests in the land.

On the other hand, defendants contend that *Leiter Minerals, Inc.* v. *United States* (5th Cir., 1964), 329 F. 2d 85, judgment vacated sub nom. *United States* v. *Leiter Minerals, Inc.,* 381 U.S. 413 (1965), as moot, is dispositive of the issues involved in this litigation.

HISTORY OF LEITER MINERALS, INC.

The case for declaratory judgment was brought in Plaquemines Parish by the claimant to the mineral servitude against the lessee of the United States for an interpretation of Act 315 of 1940 as it applied to deeds

to the United States in which a mineral servitude was reserved. The Louisiana District Court held that Act 315 of 1940 was applicable to all prescriptions, both statutory and contractual, and held for the plaintiff. Appeal was taken from that judgment to the Supreme Court of Louisiana and assigned to the Court of Appeals of Louisiana, Fourth Circuit, since the Supreme Court did not have jurisdiction, *Leiter Minerals, Inc.* v. *California Company,* 239 La. 116, 118 So. 2d 124 (1960). The Court of Appeals reversed the District Court holding that the mineral reservation in the deed to the United States was of a specified contractual duration rather than a statutory prescriptive period. *Leiter Minerals, Inc.* v. *California Company,* 126 So. 2d 76 (1961). The Supreme Court of Louisiana granted certiorari and reversed and set aside the judgment and dismissed the plaintiff's suit. *Leiter Minerals, Inc.* v. *California Co.,* 241 La. 915, 132 So. 2d 845 (1961).

Thereafter, the United States, which had not been a party to the State Court litigation, resumed its suit to quiet title to minerals in the United States District Court for the Eastern District of Louisiana. *United States* v. *Leiter Minerals, Inc.,* 204 F. Supp. 560 (1962). The District Court held that the servitude created in the deed was not governed by the usual laws of prescription and Act 315 of 1940 did not apply. Plaintiff's motion for summary judgment was granted. This case was reversed in *Leiter Minerals, Inc.* v. *United States,* 329 F. 2d 85 (5th Cir., 1964), with Judge Gewin dissenting, stating that he agreed with the District Court. Upon petition, the Supreme Court granted certiorari and thereafter, on suggestion of counsel, vacated the judgment, remanded the case to the District Court with directions to dismiss the complaint as moot. *United States* v. *Leiter Minerals, Inc.,* 381 U.S. 413 (1965).

CONCLUSIONS

Clearly, the provisions of the reservations in the instant cases reveal that the parties were stipulating for a period of contractual prescription for the conditional extinguishment of the mineral servitudes. We agree with the parties that the Fifth Circuit's 2–1 decision in *Leiter Minerals,* 329 F. 2d 85, is dispositive of the issues involved in this litigation, unless the vacating of that decision by the Supreme Court, 381 U.S. 413, frees this Court to decide the Louisiana law and the federal constitutional issues as it, this Court, feels they should be decided. The main thrust of the Government's argument is that we are to decide all issues "de novo."

The procedure of vacating the judgment and dismissing the complaint is commonly used "to prevent a judgment, unreviewable because of mootness, from spawning any legal consequences." *U.S.* v. *Munsingwear,* 340 U.S. 36. This means that the vacated judgment clears the path for future re-litigation of the issues between the parties and eliminates a judgment, review of which was prevented (in Leiter Minerals) as a result of compromise. The effect of the vacated judgment may or may not free the Fifth Circuit from its 2–1 decision. Nevertheless, this Court (the Western District of Louisiana) must give to that decision stare decisis effect. Comment, Disposition of Moot Cases by the United States Supreme Court, 22 U. Chi. L. Rev. 77, 93 (1955); *Granville-Smith* v. *Granville-Smith,* 214 F. 2d 820 (3rd Cir., 1954); *U.S.* v. *Wolfe,* 232 F. Supp. 85 (1964). Any decision by this Court which would be contrary to the Fifth Circuit decision in *Leiter Minerals* would, in my judgment, be an unwarranted attempt to usurp the authority of the appellate court. Our conclusion is that we are obligated to

follow Leiter Minerals. The dismissal of that case by the Supreme Court as moot does not constitute a cogent reason to alter that obligation.

Judgment for defendants. Proper decree should be presented.

THUS DONE AND SIGNED in Chambers at Lake Charles, Louisiana on this the 8th day of March, 1971.

United States District Judge.

United States District Court, Western District of Louisiana, Lake Charles Division

Civil Action No. 14588

UNITED STATES, PLAINTIFF,

v.

LITTLE LAKE MISERE LAND COMPANY, INC., ET AL., DEFENDANTS

Civil Action No. 14589 (Consolidated)

UNITED STATES, PLAINTIFF,

v.

MISERE OIL & GAS COMPANY, INC., ET AL., DEFENDANTS

STIPULATION OF FACTS

It is hereby stipulated and agreed by and between the attorneys for the parties to the above-entitled actions that the following facts are true and that no additional evidence will be required to establish such facts:

1. These actions were brought by the United States on April 25, 1969, to quiet title to the minerals and mineral rights in approximately 12,625 acres of land in Cameron Parish, Louisiana, which were acquired

by the United States by purchase or in condemnation proceedings in 1937 and 1939. The lands involved in these cases form a part of the Lacassine Wild Life Refuge under the jurisdiction of the Department of the Interior.

2. The jurisdiction of this Court in these cases is predicated upon 28 U.S.C. sec. 1345.

3. By order entered August 20, 1969, these actions were consolidated for trial pursuant to Rule 42(a) F.R.Civ.P.

CIVIL ACTION NO. 14588

4. The defendants, Little Lake Misere Land Company, Inc., and North American Land Company, Inc., are corporations duly organized and existing under the laws of the State of Louisiana with their principal place of business at Lake Charles in the Parish of Calcasieu, Louisiana.

5. The property described in paragraph 4 of plaintiff's complaint was acquired by the United States through a judgment of condemnation rendered in certain proceedings entitled *United States* v. *2574.18 acres of land in Cameron Parish, Louisiana, Little Lake Misere Land Company, Inc., Tax Collector of Cameron Parish, North American Land Company, Inc., Bell City Drainage District of Cameron and Calcasieu Parishes,* Civil Action File No. 4, in the United States District Court for the Western District of Louisiana, Lake Charles Division, dated January 25, 1939. The judgment of January 25, 1939, is recorded in Conveyance Book 41, page 49, under Entry No. 37771 of the Records of Cameron Parish, Louisiana, the judgment in condemnation having become final and effective through a final judgment rendered by the same court on August 30, 1939, and recorded in Conveyance Book 43, page 13, under Entry No. 41013 of the Records of Cameron Parish. Certified copies of the two

judgments are annexed hereto and made a part hereof as Exhibits 1 and 2.

6. The lands acquired by the United States in the condemnation proceedings referred to in the preceding paragraph are shown in blue on the attached map marked Exhibit "A" which is made a part hereof.

7. The judgment of condemnation in Civil Action No. 4, referred to above, contains the following reservation of minerals and mineral rights in favor of the prior owners of the property who were defendants in the condemnation proceedings:

> "Reserving unto the grantor, its successors, legal representatives and assigns, and specifically excepting from this acquisition, all the oil, gas, sulphur and other minerals in, on or under said land, together with the right of investigating, exploring, prospecting, drilling and mining for and producing said oil, gas, sulphur and other minerals, laying pipe lines, building tanks, power stations, telephone lines and other structures, thereon to produce, save, take care of, treat, store, transport and manufacture said minerals and housing the employees necessary for said purposes; which rights shall remain in force for a term of ten (10) years from the date of vesting of title in the United States and as long thereafter as oil, gas, sulphur or other mineral is produced from said land, or so long thereafter as grantor shall conduct drilling or reworking operations thereon with no cessation of more than sixty (60) days consecutively until production results; and, if production results, so long as such mineral is produced.
>
> "Provided further that at the end of said ten-year period of reservation, if not extended as hereinabove provided, or at the termination of any extended period in case the operation has not been carried on after said ten-year period as hereinabove provided, the right to mine, produce and market said oil, gas, sulphur or

other mineral shall terminate at the end of said ten years, and the complete fee title to said lands shall thereby become vested in the United States.

"Provided that forty per cent, (40%) of one-eighth (1/8) royalty of all oil, gas, sulphur and other minerals so removed shall be paid to the United States of America until the total royalties so paid to the United States shall equal the purchase price of $12,870.90."

8. No drilling, reworking or other operations were conducted and no production of minerals of any kind was obtained from the lands described in Paragraph 4 of plaintiff's complaint for a period of more than ten (10) years from and after January 25, 1939, and for a period of more than ten (10) years from and after August 30, 1939.

9. By deed dated November 15, 1966, recorded in File No. 112896 in Conveyance Book 230 of the Records of Cameron Parish, the defendant Little Lake Misere Land Company, Inc., conveyed to its shareholders, all of whom have been made defendants in this action, 90% of all of the royalties payable under oil, gas and mineral leases then or thereafter affecting the lands owned by that company prior to the judgment of condemnation rendered January 25, 1939, in Civil Action No. 4.

10. The plaintiff and the defendants have continued to claim the minerals and mineral rights in the property described in Paragraph 4 of the complaint subsequent to 1949. The United States acting through the Bureau of Land Management, Department of the Interior, issued oil and gas leases on December 1, 1955, covering the lands described in Paragraph 4 of the complaint. The defendants have also executed various contracts to other persons covering the same lands in which the defendants claim the mineral and mineral rights in the lands.

CIVIL ACTION NO. 14589

11. The defendant Misere Oil & Gas Company, Inc., is a corporation duly organized and existing under the laws of the State of Louisiana, having its principal place of business in Lake Charles in the Parish of Calcasieu, Louisiana.

12. The property described in Paragraph 3 of the plaintiff's complaint, consisting of 10,048.01 acres of land in Cameron Parish, Louisiana, was acquired by the United States by an act of sale (deed) dated July 23, 1937, from Misere Land Company, Inc., a Louisiana corporation, as vendor, to the United States of America, as vendee, recorded in Conveyance Book 34, page 60, in File No. 36321 of the Records of Cameron Parish, Louisiana. The act of sale (deed) contains the following mineral reservation in favor of the vendor:

> "Reserving unto vendor, its successors, legal representatives and assigns, and specifically excepting from this sale all the oil, gas, sulphur and other minerals in, on or under said land, together with the right of investigating, exploring, prospecting, drilling and mining for and producing said oil, gas, sulphur and other minerals, laying pipe lines, building tanks, roads and canals, power stations, telephone lines and other structures thereon to produce, save, take care of, treat, store, transport and manufacture said minerals, and housing the employees necessary for said purposes, which rights shall remain in force for a term of ten years from the date of the deed conveying said land and as long thereafter as oil, gas, sulphur or other mineral is produced from said land, or so long thereafter as vendor shall conduct drilling or reworking operations thereon with no cessation of more than sixty consecutive days until production results, and if production results, so long as such mineral is produced.

"Provided further that at the end of said ten-year period of reservation, if not extended as hereinabove provided, or at the termination of any extended period in case the operation has not been carried on after said ten-year period, as hereinabove provided, the right to mine, produce and market said oil, gas, sulphur and other minerals shall terminate at the end of said ten years, and the complete fee title to said land shall thereby become vested in the United States.

"Provided that forty per cent (40%) of one-eighth (1/8) royalty of all oil, gas, sulphur and other minerals so removed shall be paid to the United States of America until the total royalties so paid to the United States shall equal the purchase price of $40,192.04."

Certified copy of said act of sale is annexed hereto as Exhibit 3.

13. The lands acquired by the United States by the act of sale (deed) of July 23, 1937, referred to in the previous paragraph, are shown in red on the attached map which is made a part hereof as Exhibit "A."

14. No drilling, reworking or other operations were conducted and no production of minerals of any kind was obtained from the lands described in Paragraph 3 of plaintiff's complaint for a period of more than ten (10) years from and after July 23, 1937.

15. Misere Land Company, Inc., vendor in the deed to the United States of July 23, 1937, was completely and finally liquidated, and Alvin O. King, the duly elected and qualified Liquidator of said corporation, by deed dated December 27, 1943, conveyed to the shareholders of Misere Land Company, Inc., as a liquidating dividend, the minerals and mineral rights reserved by Misere Land Company, Inc., in the act of sale to the United States of July 23, 1937.

16. By various acts dated various dates in 1967, all parties who acquired from the Liquidator of Misere

Land Company, Inc., the mineral rights reserved by Misere Land Company, Inc., in the act of sale to the United States of July 23, 1937 (or the successors of those parties who had then died) conveyed such minerals and mineral rights to Misere Oil & Gas Company, Inc., defendant in this action.

17. By deed dated March 28, 1968, recorded in File No. 114405 of the Records of Cameron Parish, Misere Oil & Gas Company, Inc., conveyed to the remaining parties named as defendants in this action 90% of all the royalties payable under oil, gas and mineral leases then affecting the lands described in Paragraph 3 of plaintiff's complaint, or royalties reserved in any lease thereafter executed affecting said lands.

18. The whole of the land described in Paragraph 3 of plaintiff's complaint was acquired by Misere Land Company, Inc., from the Smith Land & Lumber Company, Inc., February 26, 1929, for $46,000.00, $11,500.00 of which was paid in cash and the balance in four promissory notes, each for $8,625.00 due at the end of successive yearly periods. The land was sold by Misere Land Company, Inc., to the United States on July 23, 1937, for $40,192.04 cash, subject to the reservation of mineral rights set forth in Paragraph 12 of this stipulation.

19. The plaintiff and the defendants have continued to claim the minerals and mineral rights in the property described in Paragraph 3 of the plaintiff's complaint subsequent to 1947. The United States acting through the Bureau of Land Management, Department of the Interior, issued oil and gas leases on December 1, 1955, covering the lands described in Paragraph 3 of the complaint. The defendants have also executed various contracts to other persons covering the same lands in which the defendants claim the mineral and mineral rights in the lands.

IN TESTIMONY WHEREOF, this stipulation is executed this 6th day of May, 1970.

DONALD E. WALTER,
United States Attorney for the Western District of Louisiana,
DOSITE H. PERKINS, Jr.,
Assistant United States Attorney,
Attorneys for Plaintiff.

AUSTIN W. LEWIS.
Attorney for Defendants.

APPENDIX B

In the
United States Court of Appeals
for the Fifth Circuit

No. 71-2425
Summary Calendar*

UNITED STATES OF AMERICA, PLAINTIFF-APPELLANT,

v.

LITTLE LAKE MISERE LAND COMPANY, INC., ET AL., DEFENDANTS-APPELLEES

Appeal from the United States District Court for the Western District of Louisiana

(December 30, 1971)

Before BELL, AINSWORTH and GODBOLD, Circuit Judges.

PER CURIAM: The United States filed suit to quiet title to various properties owned by the United States subject to mineral reservations in favor of the various parties defendant. Title to the properties was acquired by the United States in one instance by purchase on July 23, 1937, and in the other instance by judgment in condemnation proceedings on August 30, 1939. Both acquisitions were for the purpose of creating a part of the Lacassine Wildlife Refuge, a bird sanctuary in Cameron Parish, pursuant to the Migratory Bird

*Rule 18, 5 Cir.; see *Isbell Enterprises, Inc.* v. *Citizens Casualty Co. of New York, et al.*, 5 Cir. 1970, 431 F.2d 409.

Treaty, 16 U.S.C. § 703, and the Migratory Bird Conservation Act, 16 U.S.C. § 715(a) et seq. In each case the United States reserved to the landowners from whom the properties were acquired, certain mineral interests for a term of 10 years and as long thereafter as production or drilling continued. The pertinent reservation contained in the written act of sale is set out in the margin.[1] The mineral reservation contained in the judgment of condemnation is substantially the same as that contained in the act of sale. It was stipulated that there had been no drilling on the properties within 10 years from the date of creation of the mineral reservations. The only issue is whether the reservations created imprescriptible mineral servitudes

[1] "Reserving unto the grantor, its successors, legal representatives and assigns, and specifically excepting from this acquisition all the oil, gas, sulphur and other minerals in, on or under said land, together with the right of investigating, exploring, prospecting, drilling and mining for and producing said oil, gas, sulphur and other minerals, laying pipe lines, building tanks, power stations, telephone lines and other structures, thereon to produce, save, take care of, treat, store, transport and manufacture said minerals and housing the employees necessary for said purposes; which rights shall remain in force for a term of ten (10) years from the date of vesting of title in the United States and as long thereafter as oil, gas, sulphur or other mineral is produced from said land, or so long thereafter as grantor shall conduct drilling or reworking operations thereon with no cessation of more than sixty (60) days consecutively until production results; and, if production results, so long as such mineral is produced.

"Provided further that at the end of said ten-year period of reservation, if not extended as hereinabove provided, or at the termination of any extended period in case the operation has not been carried on after said ten-year period as hereinabove provided, the right to mine, produce and market said oil, gas, sulphur or other minerals shall terminate at the end of said ten years, and the complete fee title to said lands shall thereby become vested in the United States."

within the meaning of Act 315 of 1940 of the Louisiana Legislature, La. R. S. 9:5806(A), or whether they were extinguished by 10 years of nonuser.[2]

The District Court held that "[c]learly, the provisions of the reservations in the instant cases reveal that the parties were stipulating for a period of contractual prescription for the conditional extinguishment of the mineral servitudes." Thus, under Act 315 the mineral reservations were imprescriptible. The District Court considered himself bound by our former opinion in the case of *Leiter Minerals, Inc.* v. *United States,* 5 Cir. 1964, 329 F. 2d 85, vacated as moot, sub nom., *United States* v. *Leiter Minerals Inc.,* 381 U.S. 413, 85 S. Ct. 1575 (1965). The United States argues that *Leiter* is of no precedential value because of the Supreme Court's dismissal as moot. The Government argues that Leiter was incorrectly decided by us and should now be reversed. We disagree and affirm the judgment of the lower court on the basis of the principles enunciated by Judge Rives for the Court in *Leiter.*

Finally, the Government contends that if Act 315 is interpreted so as to "extend" the grantors' or con-

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[2] Act 315 of 1940 provides:

"Section 1. Be it enacted by the Legislature of Louisiana, That when land is acquired by conventional deed or contract, condemnation or expropriation proceedings by the United States of America, or any of its subdivisions or agencies, from any person, firm or corporation, and by the act of acquisition, verdict or judgment, oil, gas, and/or other minerals or royalties are reserved, or the land so acquired is by the act of acquisition conveyed subject to a prior sale or reservation of oil, gas and/or other minerals or royalties, still in force and effect, said rights so reserved or previously sold shall be imprescriptible.

"Section 2. That Act 68 and Act 151 of 1938 and all other laws or parts of laws, general or special, in conflict herewith are hereby repealed."

demnees' servitude in the minerals, it would be unconstitutional as impairing the obligations of contract; as derogating the supreme power of the Federal Government to acquire a precise estate by condemnation or purchase; and as hostile and discriminatory against the United States in the acquisition of an interest in land. The first and second points have been rejected by us in *United States* v. *Nebo Oil Co.*, 5 Cir., 1951, 190 F. 2d 1003. The principles enunciated in *Nebo* were reaffirmed by Judge Rives in *Leiter*, 329 F. 2d at 94. As to the contention that Louisiana's Act 315 is hostile to the United States, we note that the same principle applies to acquisitions by the State of Louisiana, La. R. S. 9:5806(B), and that the act really does nothing more than place citizens of Louisiana in the same position as citizens of other states whose land has been purchased or condemned by the United States. We hold, therefore, that Act 315 is not unconstitutional. See *United States* v. *Fox*, 94 U.S. 315, 24 L. Ed. 192 (1877); *United States* v. *Burnison*, 339 U.S. 87, 70 S. Ct. 503 (1950). Cf. *United States* v. *1,078.27 Acres of Land, etc.*, 5 Cir., 1971, —— F.2d —— [No. 29912, July 6].

AFFIRMED.

APPENDIX C

United States Court of Appeals for the Fifth Circuit

October Term, 1971

No. 71-2425
Summary Calendar

D.C. Docket No. CA 14,588 & 14,589

UNITED STATES OF AMERICA, PLAINTIFF-APPELLANT,

v.

LITTLE LAKE MISERE LAND COMPANY, INC., ET AL.,
DEFENDANTS-APPELLEES

Appeal from the United States District Court for the Western District of Louisiana

Before BELL, AINSWORTH and GODBOLD, Circuit Judges.

JUDGMENT

This cause came on to be heard on the transcript of the record from the United States District Court for the Western District of Louisiana, and was taken under submission by the Court upon the record and briefs on file, pursuant to rule 18;

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, affirmed;

It is further ordered that plaintiff-appellant pay to defendants-appellees, the costs on appeal to be taxed by the Clerk of this Court.

Issued As Mandate: January 21, 1972.

DECEMBER 30, 1971.

APPENDIX D

United States Court of Appeals, Fifth Circuit

March 3, 1964

No. 19963

THE LEITER MINERALS, INC., APPELLANT,

v.

UNITED STATES OF AMERICA, ET AL., APPELLEES

RIVES, Circuit Judge.

The question presented is the right to mine and remove oil, gas, and other minerals from about 8711 acres of land in Plaquemines Parish, Louisiana, a right worth many millions of dollars. The mineral right was established in a deed dated December 21, 1938 from Thomas Leiter conveying the lands to the United States, and reserving the right to the minerals as follows:

> "The Vendor reserves from this sale the right to mine and remove, or to grant to others the right to mine and remove, all oil, gas and other valuable minerals which may be deposited in or under said lands, and to remove any oil, gas or other valuable minerals from the premises; the right to enter upon said lands at any time for the purpose of mining and removing said oil, gas and minerals, said right, subject to the conditions hereinafter set forth, to expire April 1, 1945, it being understood, however, that the vendors will pay to the United States of America 5% of the gross proceeds received by them as royalties or otherwise from all oil or minerals

so removed from in or under the aforedescribed lands, until such time as the vendors shall have paid to the United States of America, the sum of $25,000 being the purchase price paid by said United States of America for the aforedescribed properties.

"Provided, that if at the termination of the ten (10) year period of reservation, it is found that such minerals, oil and gas are being operated and have been operated for an average of at least 50 days per year during the preceding three (3) year period to commercial advantage, then, and in that event, the said right to mine shall be extended for a further period of five (5) years, but that the right so extended shall be limited to an area of twenty-five acres of land around each well or mine producing, and each well or mine being drilled or developed at time of first extension, to-wit: April 1, 1945.

"Provided, that this said right to mine as previously stated shall be further extended from time to time for periods of five (5) years whenever operation during the preceding five (5) year period has been for an average of 50 days per year during this period, and

"Provided that at the termination of the ten (10) year period of reservation, if not extended, or at the termination of any extended period in case the operation has not been carried on for the number of days stated, the right to mine shall terminate, and complete fee in the land becomes vested in the United States.

"The reservation of the oil and mineral rights herein made for the original period of ten (10) years and for any extended period or periods in accordance with the above provisions shall not be affected by any subsequent conveyance of all or any of the aforementioned properties by the United States of America, but said mineral rights shall, subject to the conditions above above (sic) set forth, remain vested in the vendors."

The appellant, Leiter Minerals, Inc., hereafter Leiter, is the successor in interest to the right reserved by Thomas Leiter, and bases its claim upon that reservation. It concedes that no minerals have ever been produced by either Thomas Leiter or any successor in interest to the right established by that reservation. The United States issued four oil and gas leases to Frank J. Lobrano and Allen Lobrano, who entered into operating agreements with The California Company, hereafter California. California completed the first producing well in January 1950. By May of 1954, 80 wells were producing, under which the royalty paid to the United States had then exceeded $3,500,000.00.

Under the terms of the reservation, it would be clear that the right to mine terminated and complete fee in the land became vested in the United States but for the possible operation on the mineral right of two Louisiana statutes. Act No. 151 of 1938, in existence at the date of the deed, provided:

> "* * * That when real estate is acquired by the United States of America, the State of Louisiana, or any of its subdivisions, from any person, firm or corporation for use in any public work and/or improvement, and, by the act of acquisition, oil, gas and/or other minerals or royalties are reserved, prescription shall not run against such reservation of said oil, gas and/or other minerals or royalties."

That Act was repealed by Act 315 of 1940, LSA-R.S. 9:5806, which provides:

> "* * * That when land is acquired by conventional deed or contract, condemnation or expropriation proceedings by the United States of America, or any of its subdivisions or agencies, from any person, firm or corporation, and by the act of acquisition, verdict or judgment, oil, gas, and/or other minerals or royalties are

> reserved, or the land so acquired is by the act of acquisition conveyed subject to a prior sale or reservation of oil, gas and/or other minerals or royalties, still in force and effect, said rights so reserved or previously sold shall be imprescriptible."

The ownership of the mineral right depends upon whether the mineral reservation provided for a contractual prescription for the conditional extinguishment of the mineral servitude which was rendered inoperative by the Louisiana statutes.

The first suit was filed in a Louisiana state court on August 13, 1953 by Leiter, against California and Allen L. Lobrano. The United States then filed in the federal district court the present action to quiet title, asserting its right to the minerals. The district court granted a preliminary injunction enjoining Leiter from prosecuting the state court action.[1] This Court affirmed.[2] On certiorari, the Supreme Court modified the judgment of this Court to permit an interpretation of the Louisiana statute involved to be sought with every expedition in the Louisiana courts, saying:

> "The Government contends that Act No. 315 of 1940 does not apply when the parties themselves have contracted for a reservation of specific duration and that if the statute is construed to apply to this situation, it would impair the obligation of the Government's contract. Petitioner disagrees. The Supreme Court of Louisiana has never considered the specific issue or even discussed generally the rationale of the statute, especially with reference to problems of constitutionality. The District

[1] Opinion reported as *United States* v. *Leiter Minerals, Inc.*, E.D.La. 1954, 127 F. Supp. 439.

[2] *Leiter Minerals, Inc.* v. *United States*, 5 Cir. 1955, 224 F. 2d 381.

> Court recognized the importance of the statute in deciding this case; it also recognized that a problem of interpretation was involved, that the statute cannot be read by him who runs. What are the situations to which the statute is applicable? Is the statute merely declaratory of prior Louisiana law? What are the problems that it was designed to meet? The answers to these questions are, or may be, relevant. Before attempting to answer them and to decide their relation to the issues in the case, we think it advisable to have an interpretation, if possible, of the state statute by the only court that can interpret the statute with finality, the Louisiana Supreme Court. The Louisiana declaratory judgment procedure appears available to secure such an interpretation, La.Rev. Stat., 1950, 13:4231 et seq., and the United States of course may appear to urge its interpretation of the statute. See *Stanley* v. *Schwalby*, 147 U.S. 508, 512–513 [13 S.Ct. 418, 37 L.Ed. 259]. It need hardly be added that the state courts in such a proceeding can decide definitively only questions of state law that are not subject to overriding federal law.
>
> "We therefore modify the judgment of the Court of Appeals to permit an interpretation of the state statute to be sought with every expedition in the state court in conformity with this opinion."

Leiter Minerals, Inc. v. *United States*, 1957, 352 U.S. 220, 229, 230, 77 S.Ct. 287, 292, 293, 1 L.Ed.2d 267. The Louisiana court rendered three published opinions, the last of which is presently of most importance.[3] The Supreme Court of Louisiana summarized its advice to the federal courts as follows:

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[3] *Leiter Minerals, Inc.* v. *California Co.*, 1960, 239 La. 116, 118 So.2d 124; *Leiter Minerals, Inc.* v. *California Co.*, Ct.App. La. 4th Cir., 1961, 126 So.2d 76; *Leiter Minerals, Inc.* v. *California Co., La.* 1961, 241 La. 915, 132 So.2d 845.

> "To summarize in conclusion, it is our view, and we hold: First, that if the reservation in the Leiter deed is construed as establishing a mineral servitude for a definite, fixed, and specified time which has elapsed, then Act 315 of 1940 is not applicable and cannot be constitutionally applied; and second, that if the reservation is construed as not establishing a servitude for a fixed, definite and certain time, and if it is decided that the provisions of the reservation show that the parties were stipulating for a period of contractual prescription for the conditional extinguishment of the mineral servitude created, then Act 315 of 1940 is applicable and constitutional. The interpretation of the contract is for the United States courts."

Leiter Minerals, Inc. v. *California Co.,* La. 1961, 241 La. 915, 132 So.2d 845, 854, 855.

The federal district court then granted summary judgment in favor of the United States.[4] This appeal is from that judgment.

The United States argues that the deed is explicit that under the admitted circumstances the right was "to expire" and "the right to mine shall terminate, and complete fee in the land become vested in the United States"; that such a contract is valid under federal law; and that the rights of the United States under the deed are governed by federal law, citing *Clearfield Trust Co.* v. *United States,* 1943, 318 U.S. 363, 63 S.Ct. 573, 87 L.Ed. 838; *United States* v. *Allegheny County,* 1944, 322 U.S. 174, 64 S.Ct. 908, 88 L.Ed. 1209; *Ivanhoe Irr. Dist.* v. *McCracken,* 1958, 357 U.S. 275, 78 S.Ct. 1174, 2 L.Ed.2d 1313; *Girard Trust Co.* v. *United States,* 3 Cir. 1945, 149 F.2d 872, 874; *Whitin Machine Works* v. *United States,* 1 Cir.

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[4] *United States* v. *Leiter Minerals, Inc.*, E.D.La. 1962, 204 F.Supp. 560.

1949, 175 F.2d 504, 507; *United States* v. *Jones,* 9 Cir. 1949, 176 F. 2d 278, 281.

The land was acquired by the United States in order to establish the "Delta Migratory Waterfowl Refuge," pursuant to the authority of the Migratory Bird Conservation Act, 16 U.S.C.A. § 703 et seq. Sections 715d and 715e authorize the Secretary of the Interior (1) to purchase or rent appropriate areas for migratory bird sanctuaries; (2) to do all things necessary to make such acquisitions; and provide, (3) that no such acquisitions by the United States shall "be defeated because of rights-of-way, easements, and reservations which * * * will in the opinion of the Secretary * * * in no manner interfere with the use of the areas so encumbered"; and (4) that such rights-of-way, easements, and reservations shall be subject to such regulations as the Secretary shall prescribe, and "it shall be expressed in the deed or lease that the use, occupation, and operation of such rights-of-way, easements, and reservations shall be subordinate to and subject to such rules and regulations as are set out in such deed or lease," or if deemed necessary by the Secretary to such rules and regulations as may be prescribed by him.

In addition, section 715f of the Migratory Act reads:

> "No deed or instrument of conveyance shall be accepted by the Secretary of the Interior under sections 715-715d, 715e, 715f-715k, and 715*l*-715r of this title *unless the State in which the area lies shall have consented by law to the acquisition by the United States of lands in that State.*" (Emphasis added.)

We have no doubt that the Congress could make federal law applicable, but we are equally clear that it had no intention to do so when it merely authorized

the contract by which the United States acquired the property. State law must govern in the absence of a federal statute making federal law applicable. *United States* v. *Certain Property, etc.*, 2 Cir. 1962, 306 F.2d 439, 444, 445.

In effect, that is the teaching of the rules of decision act.[5] While this is not a diversity case controlled by the Erie doctrine (*Erie R. Co.* v. *Tompkins*, 1938, 304 U.S. 64, 58 S.Ct. 817, 82 L.Ed. 1188), the rules of decision act always has had "application to state laws, strictly local, that is to say, to the positive statutes of the state, and the construction thereof adopted by the local tribunals, and to rights and titles to things having a permanent locality, such as the rights and titles to real estate, and other matters immovable and intra-territorial in their nature and character." *Swift* v. *Tyson*, 1842, 41 U.S. (16 Pet.) 1, 18, 10 L.Ed. 865. As to such matters, in the absence of a controlling decision by the highest court of the State, we should be guided by the best evidence available. In the classical language of Mr. Justice Cardozo, speaking for the Supreme Court in *Hawks* v. *Hamill*, 1933, 288 U.S. 52, 59, 60, 53 S.Ct. 240, 242, 77 L.Ed. 610:

"The laws of the several states, except where the Constitution or treaties of the United States or Acts of Congress otherwise require or provide, shall be regarded as rules of decision in civil actions in the courts of the United States, in cases where they apply." 28 U.S.C.A. § 1652.

> "At least it is a considered dictum, and not comment merely *obiter*. It has capacity, though it be less than a decision, to tilt the balanced mind toward submission and agreement. * * * In controversies so purely local, little gain is to

[5] "§ 1652. *State laws as rules of decision*

> be derived from drawing nice distinctions between dicta and decisions. Disagreement with either, even though permissible, is at best a last resort, to be embraced with caution and reluctance. The stranger from afar, unacquainted with the local ways, permits himself to be guided by the best evidence available, the directions or the counsel of those who dwell upon the spot."

On "* * * questions of state law that are not subject to overriding federal law * * *" (352 U.S. 230, 77 S. Ct. 293, 1 L. Ed. 2d 267), the opinions of the Louisiana state courts, rendered in response to the suggestion of the Supreme Court (352 U.S. 229, 230, 77 S. Ct. 287, 1 L. Ed. 2d 267) are all highly instructive, and the opinion of the State Supreme Court is controlling.

The State district court, Judge Bruce Nunez, entered judgment in favor of Leiter pursuant to an opinion which was adopted by Supreme Court Justice Hamlin as his dissent and is published in 132 So. 2d at pp. 856–860. In part, Judge Nunez said:

> " 'In 1938, when Leiter sold to the government and reserved the mineral rights, the government had no assurance that the mineral rights would not be forever preserved to the vendor. The government's right to become thereafter vested with the ownership of the minerals, depended entirely on the uncertain future. The contract contained specific provisions which would have permitted Leiter to maintain his mineral rights forever, or at least indefinitely. It is this Court's considered opinion that what the parties did in 1938 was to establish, in a mode not prohibited by law or public policy, a conventional or contractual prescription as to the mineral rights and when the Legislature passed Act 315 a year and a half later, those mineral rights were still in effect. Likewise, at the time the Legislature passed the 1940 Act the government's rights to the minerals

> were just as contingent and uncertain as they were when Leiter executed the deed in 1938." (132 So.2d at p. 859.)

The State Court of Appeals took a diametrically opposite view, and "declared and decreed that Act 315 of 1940 (LSA–R.S. 9:5806) does not apply in this case since the mineral reservation is of specific ex contractu duration, less than the prevailing statutory period of ten years for non-user." (126 So.2d at 82.)

Mr. Justice Hawthorne, speaking for the majority of the Supreme Court of Louisiana, thought that both the Louisiana district court and the Louisiana Court of Appeals went too far, and that they should have confined their opinions to an interpretation of the Louisiana statute:

> "As we view the matter, both the Louisiana district court and the Louisiana Court of Appeal went far beyond the directive of the United States Supreme Court, as our state courts were not asked to interpret or construe the reservation of the mineral rights in the deed to the United States." (132 So. 2d at p. 850.)

It nonetheless seems clear that the majority of the Supreme Court of Louisiana held the opinion that when the entire reservation was read together and in context, Leiter's servitude was one of indefinite duration. It disagreed flatly with the opinion of the Louisiana Court of Appeals and, continuing the paragraph of its opinion last quoted, said:

> "In this connection, however, we cannot help but observe that the Court of Appeal in reaching its conclusion did not consider the entire reservation but concentrated its whole attention on a single date in it. In this it was in error, for under Article 1955 of our Civil Code

> 'All clauses of agreements are interpreted the one by the other, giving to each the sense that results from the entire act'. For this reason the decision of the Court of Appeal on this point should not be given any weight." (132 So. 2d at p. 850.)

In another part of its opinion, the Supreme Court of Louisiana said:

> "An example of a servitude established for a certain time (a servitude of specific duration) is that created by the mineral reservation in the case of *Hodges* v. *Norton,* 200 La. 614, 8 So. 2d 618. Counsel for the government's lessees argue that the mineral reservation in that case is similar to the reservation in the Leiter deed. For what it may be worth, our opinion is that it is not." (132 So.2d at p. 851.)

We agree that, since the United States had the right to invoke federal jurisdiction (28 U.S.C.A. § 1345), the ultimate responsibility for the interpretation of the reservation rests upon the federal courts. That interpretation, however, must be in accordance with State law; and the opinions of the State courts, and especially of the State Supreme Court, are entitled to the most earnest and respectful consideration. While the State Supreme Court undertook to confine its opinion to the interpretation of the State statute, it was proper and inevitable that it do so "in light of" the reservation to which that statute might apply. See *England* v. *Louisiana State Board of Medical Examiners, et al.,* 1964, 375 U.S. 411, 84 S.Ct. 461, 11 L.Ed.2d 440.

After careful consideration, we find ourselves in full agreement with the Supreme Court of Louisiana. The federal district court observed that: "'Contractual prescription', is at best an odd notion." (204 F. Supp. 567.) The notion, however, appears to us con-

sistent with the concept of a private law between the parties embodied in the provisions of the LSA-Civil Code that, "agreements legally entered into have the effect of laws on those who have formed them," Article 1901; and again, "legal agreements having the effects of law upon the parties, none but the parties can abrogate or modify them," Article 1945. That last expression is, of course, not intended to deny any power of the Louisiana Legislature to render an agreement inoperative, for in this case the Louisiana Supreme Court has advised as to Act 315 of 1940 that:

> "The act draws no distinction between statutory and contractual prescription, and, as we view the matter from the history of the act and the objects and purposes for which it was adopted, it is manifest that the Legislature intended the act to be applicable to prescription whether established by statute or by contract where prescription had not already accrued at the time the act became effective." (132 So. 2d at p. 854.)

The Louisiana Supreme Court cites as kinds of servitude which may not be affected by prescription, those which meet the tests of Article 821,[6] or of Article 783(6)[7] of the Civil Code of Louisiana (132 So. 2d at 852).

---

[6] "Art. 821. Servitudes are also extinguished when they have been established for a certain time only, or under a condition that in a certain event they shall cease; for when the time expires, or the event takes place, the servitude becomes extinguished of right." 3 LSA-C.C. Title 4.

[7] "Art. 783. Servitudes are extinguished:

"* * *

"6. By the expiration of the time for which the servitude was granted, or by the happening of the dissolving condition attached to the servitude." 3 LSA-C.C. Title 4.

Whether the parties stipulated for a period of contractual prescription must be determined from their viewpoint as of the time they entered into the contract. That is shown by the words "have been established" in Civil Code Article 821, note 6, supra, and is recognized in the Louisiana Supreme Court's summary of its holdings which we have quoted, and at other places in the opinion of the Louisiana Supreme Court, e.g.:

> "Where mineral rights in lands sold to the United States government are reserved for a certain, definite, and fixed time in the contract, or, in other words, where the servitude has been established for a certain or fixed time, at the expiration of the time fixed the servitude is lost or extinguished; and since in such a case there is no question of prescription, Act 315 of 1940 is without application." (132 So. 2d at p. 853.)

Under that language, it seems clear that "a certain time only" as used in Article 821 means "a certain definite and fixed time." Louisiana Civil Code, Articles 2048 and 2049 make it equally clear that "certain event" means an event which in the course of nature is certain to occur.

> "Art. 2048. The time given or limited for the performance of an obligation, is called its *term.*"
>
> "Art. 2049. A term may not only consist of a determinate lapse of time, but also of an event, provided that event be in the course of nature, certain; if it be uncertain, it forms a condition."

The first paragraph of the reservation provided: "* * * the right to enter upon said lands at any time for the purpose of mining and removing said oil, gas and minerals, said right, subject to the conditions hereinafter set forth, to expire April 1, 1945 * * *."

But for the words "subject to the conditions hereinafter set forth" the servitude would have been established "for a certain time only." The first condition was expressed in the next paragraph, as follows:

> "* * * if at the termination of the ten (10) year period of reservation, it is found that such minerals, oil and gas are being operated and have been operated for an average of at least 50 days per year during the preceding three (3) year period to commercial advantage, then, and in that event the said right to mine shall be extended for a further period of five (5) years, but that the right so extended shall be limited to an area of twenty-five acres of land around each well or mine producing, and each well or mine being drilled or developed at time of first extension, to-wit: April 1, 1945."

It seems to us inescapable that that condition made the period for which the servitude was established indefinite and uncertain. At the time the parties entered into the contract it could not be known whether that condition would be met. The event was not "in the course of nature, certain".[8]

Successive conditions, likewise indefinite and uncertain, are provided in the succeeding paragraph:

> "* * * said right to mine as previously stated shall be further extended from time to time for periods of five (5) years whenever operation during the preceding five (5) year period has been for an average of 50 days per year during this period * * *."

At the time the servitude was established, it might extend, according to the contract, for 10 years, 15 years, 20 years or until the minerals were exhausted. The district court properly commented that "[t]he

[8] Art. 2049 of LSA-Civil Code.

Louisiana Supreme Court itself has told us that an 'uncertain and indefinite duration' is the hallmark of prescription," and continued, "Here the hallmark is missing." (204 F. Supp. at p. 567). We cannot agree, but think that here the hallmark is inescapably present.

The district court pointed out many ways in which the "periods of reservation" differed from statutory prescription:

> "* * * There are other essential differences between the effect of these provisions and the rules of liberative prescription. These may be summarized:
>
> "First, under the present contract, *a large area will be released* from the servitude after the expiration of ten years *regardless of use or production*, for only 25 acres around each well are saved in any event.
>
> "Second, no use of the servitude short of *actual production in paying quantities for at least fifty days a year for three years* will preserve any part of the servitude beyond the primary term.
>
> "Third, only production in the *last three years* of the primary term will renew the servitude.
>
> "Fourth, even the requisite production at the right time will renew the servitude for *only five additional years.*
>
> "These are not the characteristics of legal prescription, nor of any known contractual variant." (204 F. Supp. at pp. 566, 567.)

There would be no need to recognize contractual prescription if it had to conform to statutory prescription. Art. 1764 of the LSA-Civil Code provides, in part, that, "All things that are not forbidden by law, may legally become the subject of, or the motive for contracts * * *." Thus, Louisiana provides for the utmost liberty to contract. We can see no reason why the contracting parties were not at liberty to pre-

scribe the type of user which will overcome the presumption of abandonment and to require that it be a successful user. See *Keebler* v. *Seubert,* 1929, 167 La. 901, 120 So. 591, 592. We conclude that the district court erred in holding that the reservation in the deed did not provide for a contractual prescription for the conditional extinguishment of the mineral servitude which was rendered inoperative by the Louisiana statutes.

Appellees insist, however, that if the Louisiana statutes are so applied they would be unconstitutional because they would impair the obligations of the contract. Article I, Section 10 of the Constitution provides that, "No state shall * * * pass any * * * law impairing the obligation of contracts." The Constitution of Louisiana contains a similar provision, as to which the Supreme Court of Louisiana held: "Act 315 of 1940 does not violate Article 4, Section 15, of the Louisiana Constitution of 1921, which provides that vested rights shall not be divested and that no law impairing the obligation of contracts shall be passed." (132 So.2d at p. 854.) The reasoning upon which that holding was based seems to us sound and to apply with equal force to the like provision of the Constitution of the United States. The discussion, together with the full discussion of the constitutionality of Act 315 of 1940 contained in this Court's opinion in *United States* v. *Nebo Oil Co.,* 5 Cir. 1951, 190 F. 2d 1003, 1009, 1010, make it unnecessary further to labor the constitutional question.

That is even more clear when we consider that the contract may not have become legally binding until it was ratified and adopted by Thomas Leiter on October 24, 1938, after Act No. 151 of 1938 had been passed. Theretofore the contract of March 14, 1935 had been executed only by the executors and trustees under the will of Joseph Leiter without any

court authority, and though a space was provided for the execution of the agreement on behalf of the United States by the Secretary of Agriculture, it had never been so executed. Thomas Leiter's ratification recites that, "* * * on June 27, 1935, the United States of America mailed a notice of acceptance 'of the aforesaid offer to Mr. C. J. Tessier, 217 Carondelet Street, New Orleans, Louisiana, accepting the option above described on the terms and provisions stipulated therein' * * *." Mr. Tessier's authority or connection with the title does not otherwise appear from the record. It does appear, however, that on October 18, 1935 the Executors and Trustees under the will of Joseph Leiter executed a grant of preliminary use and occupation "in order that the United States may immediately establish the Delta Migratory Waterfowl Refuge by Executive Order." Under that permission, the United States entered into possession in 1936 and surveyed and mapped the area during the Winter of 1936–1937.

It is thus doubtful whether the contract became legally binding prior to the passage of Act No. 151 of 1938. Upon the assumption, however, that it became binding on its date, March 14, 1935, we hold there is no constitutional obstacle to the application of the Louisiana statutes—Act No. 151 of 1938 or Act No. 315 of 1940.

The judgment of the district court is therefore reversed and the cause remanded for further proceedings in accordance with this opinion.

Reversed and remanded.

GEWIN, Circuit Judge (dissenting).

After carefully considering the brilliant, clear and well-written opinion of the majority, I find myself more in agreement with the opinion of the District

Court [1] than with the majority opinion. Accordingly, I would adhere to the result and the conclusions reached by the District Court.

It appears to me that the majority opinion is not correct in holding that the mineral reservation provided for a contractual prescription for the *conditional* extinguishment of the mineral servitude which was rendered inoperative by the Louisiana statutes, which is to say, that there were conditions or a condition set forth in the contract which made the period for which the servitude was established indefinite and uncertain. The reservation was not of indefinite duration in my view, but was for a definite, fixed and specified time which elapsed on December 21, 1948,[2] before the Government executed its lease and before the discovery of oil.

The contract did not provide for a *conditional extinguishment,* but actually provided for a *conditional partial renewal.* The renewal conditions were not met during the initial 10 year period, and only the occurrence of those uncertain conditions would have renewed or extended the definite, fixed initial period of 10 years. The term of the servitude is definite. The right of renewal or extension is conditional and indefinite. In addition to the foregoing, as clearly pointed out by the District Court and noticed by the majority, a large area of the property would be released from the servitude inevitably, regardless of what took place.

I would affirm the judgment of the District Court.

---

[1] *United States* v. *Leiter Minerals, Inc.* (D.C.E.D. La. 1962) 204 F. Supp. 560.

[2] See note 26 of the District Court's opinion reported in 204 F. Supp. 560.

APPENDIX E

Additional Statutes Involved

Migratory Bird Conservation Act of February 18, 1929, 45 Stat. 1222, 16 U.S.C. (1964 ed.) 715, *et seq.*:

§ 715a. A commission to be known as the Migratory Bird Conservation Commission, consisting of the Secretary of the Interior, as chairman, the Secretary of Commerce, the Secretary of Agriculture and two Members of the Senate, to be selected by the President of the Senate, and two Members of the House of Representatives to be selected by the Speaker, is created and authorized to consider and pass upon any area of land, water, or land and water that may be recommended by the Secretary of the Interior for purchase or rental under sections 715–715d, 715e, 715f–715k, and 715*l*–715r of this title, and to fix the price or prices at which such area may be purchased or rented; and no purchase or rental shall be made of any such area until it has been duly approved for purchase or rental by said commission. * * *

§ 715c. The Secretary of the Interior shall recommend no area for purchase or rental under the terms of sections 715–715d, 715e, 715f–715k, and 715*l*–715r of this title except such as he shall determine is necessary for the conservation of migratory game birds.

§ 715d. The Secretary of the Interior is authorized to purchase or rent such areas as have been approved for purchase or rental by the commission, at the price or prices fixed by said commission, and to acquire by gift or devise, for use as inviolate sanctuaries for migratory birds, areas which he shall determine to be suitable for such purposes, and to pay the

purchase or rental price and expenses incident to the location, examination, and survey of such areas and the acquisition of title thereto, including options when deemed necessary by the Secretary of the Interior from moneys to be appropriated hereunder by Congress from time to time * * *.

§ 715d–1. When the public interests will be benefited thereby the Secretary of the Interior is authorized, in his discretion, to accept on behalf of the United States title to any land which he deems chiefly valuable for wildlife refuges, and in exchange therefor to convey by deed on behalf of the United States an equal value of lands acquired by him for like purposes, or he may authorize the grantor to cut and remove from such lands an equal value of timber, hay, or other products, or to otherwise use said lands, when compatible with the protection of the wildlife thereon, the values in each case to be determined by said Secretary. Timber or other products so granted shall be cut and removed, and other uses exercised, under the laws and regulations applicable to such refuges and under the direction of the Secretary of the Interior and under such supervision and restrictions as he may prescribe. * * *

§ 715e. The Secretary of the Interior may do all things and make all expenditures necessary to secure the safe title in the United States to the areas which may be acquired under sections 715–715d, 715e, 715f–715k, and 715*l*–715r of this title, but no payment shall be made for any such areas until the title thereto shall be satisfactory to the Attorney General, but the acquisition of such areas by the United States shall in no case be defeated because of rights-of-way, easements, and reservations which from their nature will in the opinion of the Secretary of the Interior in no manner interfere with the use of the areas so encumbered for the purposes of said sections, but such rights-of-way,

easements, and reservations retained by the grantor or lessor from whom the United States receives title under said sections or any other Act for the acquisition by the Secretary of the Interior of areas for wildlife refuges shall be subject to rules and regulations prescribed by the Secretary of the Interior for the occupation, use, operation, protection, and administration of such areas as inviolate sanctuaries for migratory birds or as refuges for wildlife; and it shall be expressed in the deed or lease that the use, occupation, and operation of such rights-of-way, easements, and reservations shall be subordinate to and subject to such rules and regulations as are set out in such deed or lease or, if deemed necessary by the Secretary of the Interior, to such rules and regulations as may be prescribed by him from time to time.

§ 715f. No deed or instrument of conveyance shall be accepted by the Secretary of the Interior under sections 715–715d, 715e, 715f–715k, and 715*l*–715r of this title unless the State in which the area lies shall have consented by law to the acquisition by the United States of lands in that State.

§ 715g. The jurisdiction of the State, both civil and criminal, over persons upon areas acquired under sections 715–715d, 715e, 715f–715k and 715*l*–715r of this title shall not be affected or changed by reason of their acquisition and administration by the United States as migratory-bird reservations, except so far as the punishment of offenses against the United States is concerned.

§ 715i. No person shall knowingly disturb, injure, or destroy any notice, signboard, fence, building, ditch, dam, dike embankment, flume, spillway, or other improvement or property of the United States on any area acquired under sections 715–715d, 715e, 715f–715k, and 715*l*–715r of this title, or cut, burn, or destroy any timber, grass, or other natural growth, on said

area or on any area of the United States which heretofore has been or which hereafter may be set apart or reserved for the use of the Department of the Interior as a game refuge or as a preserve or reservation and breeding ground for native birds, under any law, proclamation, or Executive order, or occupy or use any part thereof, or enter thereon for any purpose, except in accordance with regulations of the Secretary of the Interior * * *.

§ 715k. For the acquisition, including the location, examination, and survey, of suitable areas of land, water, or land and water, for use as migratory bird reservations, and necessary expenses incident thereto, and for the administration, maintenance, and development of such areas and other preserves, reservations, or breeding grounds frequented by migratory game birds and under the administration of the Secretary of the Interior, including the construction of dams, dikes, ditches, flumes, spillways, buildings, and other necessary improvements, and for the elimination of the loss of migratory birds from alkali poisoning, oil pollution of waters, or other causes, for cooperation with local authorities in wildlife conservation, for investigations and publications relating to North American birds, for personal services, printing, engraving, and issuance of circulars, posters, and other necessary matter and for the enforcement of the provisions of sections 715–715d, 715e, 715f–715k, and 715*l*–715r of this title, there are authorized to be appropriated * * *.

§ 715s. (1958 ed.) Twenty-five per centum of all money received during each fiscal year from the sale or other deposition of surplus wildlife, or of timber, hay, grass, or other spontaneous products of the soil, shell, sand, or gravel, and from other privileges on refuges established under sections 715–715d, 715e, 715f–715k, and 715*l*–715r of this title, * * * shall be paid at the end of such year by the Secretary of the

Treasury to the county or counties in which such refuge is situated, to be expended for the benefit of the public schools and roads in the county or counties in which such refuge is situated * * *.

Act No. 12, Louisiana Statutes of 1892:

AN ACT

To cede jurisdiction to the United States over certain land and for the purchase and condemnation thereof.

Section 1. Be it enacted by the General Assembly of the State of Louisiana, That the United States shall have power to purchase or condemn in the manner prescribed by law, upon making just compensation therefor, any land in the State of Louisiana, not already in use for public purposes, required for custom houses, court houses, arsenals, national cemeteries, or for other purposes of the government of the United States.

Sec. 2. Be it further enacted, etc., That the United States may enter upon and occupy any land which may have been, or may be purchased or condemned, or otherwise acquired, and shall have the right of exclusive jurisdiction over the property so acquired during the time that the United States shall be or remain the owner thereof for all purposes, except the administration of the criminal laws of said State, and the service of civil process of said State therein, and shall hold the same exempt from all State, parochial, municipal, or other taxation.

Approved June 20, 1892.

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SUPREME COURT, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-1459

UNITED STATES OF AMERICA,
Petitioner,

versus

LITTLE LAKE MISERE LAND COMPANY, INC., ET AL,
Respondents.

BRIEF OF LITTLE LAKE MISERE LAND COMPANY, INC., ET AL, RESPONDENTS, IN OPPOSITION TO THE APPLICATION OF THE UNITED STATES FOR WRIT OF CERTIORARI.

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IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1971

No. 71-1459

UNITED STATES OF AMERICA,
Petitioner,

versus

LITTLE LAKE MISERE LAND COMPANY, INC., ET AL,
Respondents.

BRIEF OF LITTLE LAKE MISERE LAND COMPANY, INC., ET AL, RESPONDENTS, IN OPPOSITION TO THE APPLICATION OF THE UNITED STATES FOR WRIT OF CERTIORARI

STATEMENT

The application of the United States fairly sets forth the undisputed facts in this case, and they will not be repeated here.

It is felt that in reviewing the history of the *Leiter Minerals* litigation, greater attention could have been paid in the application to the vital advisory opinion of the Louisiana Supreme Court in *Leiter Minerals, Inc. v. California Co.*, 241 La. 915, 132 So.2d 845 (1961). Also, there seems to be justified a more detailed analysis of this Court's decision in *Leiter Minerals, Inc. v. United States*, 352 U.S. 220 (1957). More extensive discussions of these decisions will be made later in this brief.

ARGUMENT

It is known that the Solicitor General, on behalf of the United States, attempts as a matter of policy to restrict application for writs of certiorari to this Court to cases involving questions of unusual importance or issues that are vital to the Government. Nevertheless, it is submitted that in selecting this case for application, a clear error of judgment was made.

The only possible grounds that can be invoked by the United States to justify its present application under Rule 19 of the Rules of this Court are (1) that the Court below has decided an important question of federal law which has not been, but should be, settled by this Court, or (2) that it has decided a federal question in a way in conflict with applicable decisions of this Court. It can easily be demonstrated that neither of these conditions exists, but rather that to the contrary, the Government is being forced to challenge settled decisions of this Court against its contentions. In fact, on one of the initial issues raised in the application (the applicability of state law or federal law) it will be shown later that this Court is being asked to overrule or at least emasculate its own decision in *Leiter Minerals, Inc. v. United States*[1] on the applicability of Louisiana Act 315 of 1940, the State statute that is directly at issue in the present case.

As nearly as is possible of accomplishment, this opposition brief will discuss the issues in the order that they were presented in the Government's application.

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[1]352 U.S. 220 (1957).

An exception must be made, however, to consider first the all-important question as to whether state law (Louisiana Act 315 of 1940) or federal law is controlling in construing the mineral claims of the Government.

State Law Rather Than Federal Law Must Be Applied In Determining The Government's Present Claim To The Mineral Rights In These Properties.

Laying aside for later discussion the constitutional issues raised by the United States, the initial issue is whether in connection with these two isolated acquisitions of Louisiana real property by the Government, Federal law must be held to be paramount and controlling and the applicable Louisiana law must therefore be disregarded.

The obvious purpose of the Government's application is to have this Court review and overturn the decision of the Fifth Circuit Court of Appeals in *Leiter Minerals, Inc. v. United States*, 329 F.2d 85 (5th Cir. 1964) (herein *Fifth Circuit - Leiter*). That decision held that Louisiana Act 315 of 1940 applied to a similar reservation by the United States and that it was constitutional. The present effort of the United States would be accomplished by obtaining a ruling from this Court that federal law rather than state law should be applied here in determining whether the mineral rights originally reserved by the United States are still in effect, thereby ignoring Act 315 of 1940 and the interpretation of that statute made by the Supreme Court of Louisiana.[2]

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[2]*Leiter Minerals, Inc. v. California Co.*, 241 La. 915, 132 So.2d 845 (1961).

As was previously noted, the end result of upholding the Government's arguments on this point would be the modification and emasculation of the prior decision of this Court in *Leiter Minerals, Inc. v. United States*, 352 U.S. 220 (herein *Supreme Court - Leiter*). A brief review of the somewhat turbulent history of the *Leiter* litigation will readily substantiate this statement.

Just as occurred in the present case, the federal judicial proceedings in *Leiter* commenced with a District Court action by the Government to quiet its title to mineral rights that had been reserved from a sale to the United States. The only irrelevant difference was that *Leiter* included a request for the staying of further proceedings in the State Court on the same issue. After wending its way through the District Court[3] and the Fifth Circuit Court of Appeals[4], writ of certiorari was granted by this Court which resulted in its 1957 ruling in *Supreme Court - Leiter*.[5] Squarely before the Court was the question of whether Louisiana Act 315 of 1940 should be applied and, if so, the determination of the proper interpretation of that statute. This Court, through Justice Frankfurter, then ruled quite explicitly that the interpretation of the 1940 Louisiana statute was a matter of State law and that, therefore, a construction of the Act should be obtained from the Louisiana Supreme Court. In so doing, this was said:

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[3]*United States v. Leiter Minerals, Inc.*, 127 F.Supp. 439 (E.D.La. 1954).

[4]*Leiter Minerals, Inc. v. United States*, 224 F.2d 381 (5th Cir. 1955).

[5]*Leiter Minerals, Inc. v. United States*, 352 U.S. 220 (1957).

"... The Supreme Court of Louisiana has never considered the specific issue or even discussed generally the rationale of the statute, especially with reference to problems of constitutionality. The District Court recognized the importance of the statute in deciding this case; it also recognized that a problem of interpretation was involved, that the statute cannot be read by him who runs. What are the situations to which the statute is applicable? Is the statute merely declaratory of prior Louisiana law? What are the problems that it was designed to meet? The answers to these questions are or may be relevant. Before attempting to answer them and to decide their relation to the issues in the case, *we think it advisable to have an interpretation, if possible, of the state statute by the only court that can interpret the statute with finality, the Louisiana Supreme Court.* (352 U.S. at 229.) (Emphasis added.)

If there could be any question concerning the effect of this ruling, it definitely was dispelled by the dissenting opinion of Justice Douglas, who argued that the federal court should decide the issue without regard to the interpretation of the state court.[6]

If as now contended by the United States, federal law should be held to be paramount to the exclusion of the State statute, this Court would obviously have done a vain and useless thing in *Supreme Court* -

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[6]352 U.S. 220, 231.

Leiter in directing the remand of the case to the Louisiana Supreme Court for an interpretation of the State act and a consideration of its constitutionality. On the other hand, if *Supreme Court - Leiter* is to be followed, Louisiana Act 315 of 1940 as interpreted by the highest court of that State must be held to be applicable, and there remains in this case only the issue of whether it can be constitutionally applied to the mineral rights reserved in the transfers to the United States.

The *Supreme Court - Leiter* decision does not stand alone on this point. Where only specific and isolated acquisitions of real property are involved and in the absence of specific Congressional action national in scope or a determination of the existence of an overpowering constitutional interest in the United States, state law is uniformly applied to such transactions. This is based on the concept that the states possess the power to regulate the tenure of real property within their respective limits and the modes of its acquisition and transfer. *United States v. Fox*, 94 U.S. (4 Otto) 315 (1877); *United States v. Burnison*, 339 U.S. 87 (1950); *Mason v. United States*, 260 U.S. 545 (1923); *Sunderland v. United States*, 266 U.S. 226 (1924); *Davies Warehouse Co. v. Bowles*, 321 U.S. 144 (1944); *United States v. Yazell*, 382 U.S. 341 (1966). In *United States v. Yazell*, this Court ruled that in the absence of specific Congressional action the federal court should not override state law unless compelled to do so by clear and substantial interests of the national government; and in so ruling, this was said:

> "The decisions of this Court do not compel or embrace the result sought by the Government. None of the cases in which this Court has devised and applied a federal principle of law superseding state law involved an issue arising from an individually negotiated contract." (382 U.S. at 353.)

Conversely, the United States can invoke state laws for the protection of its own property interests within that state. *Cotton v. United States,* 52 U.S. (11 How.) 228, 231 (1850).

Finally, this Court has again spoken on the subject contrary to the present arguments of the United States in the recent decision of *Wallis v. Pan American Petroleum Corp.,* 384 U.S. 63 (1966). There was involved in that case the enforcement of an option agreement relating to the acquisition of a federal lease, which clearly involved the rights of the United States in the future enforcement and management of that lease contract. Nevertheless, this Court held that state law rather than federal law should be applied in interpreting the agreement.

In its present application, the United States seeks to justify its contention that federal law should be imposed to the exclusion of Louisiana Act 315 of 1940 by invoking the "Clearfield Trust" doctrine. Offered as support of its contention are such decisions as *United States v. Allegheny County,* 322 U.S. 174 (1944); *Ivanhoe Irrigation District v. McCracken,* 357 U.S. 275 (1958) and *Clearfield Trust Co. v. United States,* 318

U.S. 363 (1943). These cases and all other decisions offered in the Government's application on this point clearly are inapposite. All presented situations either (1) where the action of the Government was derived from constitutional authority, or (2) where the necessity for a uniform application of a federal statute national in scope was apparent, or (3) where some significant threat to the constitutional functions of the United States would be present. For example, in *Allegheny County* there was involved the question whether a war contract made by the Federal Government under its constitutional powers was immune from limitation (by taxation) under state law. *Ivanhoe Irrigation District v. McCracken* simply applied the well-settled rule that a state cannot compel the use of federal property on terms contradictory to those specifically prescribed by Congress; and in *Clearfield Trust Co. v. United States*, it was held that the rights and duties of the United States in the handling of its commercial paper are governed by federal law since the Government is disbursing its funds or paying its debts in the exercise of a constitutional function. These decisions are in sharp contrast to the situation involved here where the Government has simply acquired real property in a proprietary capacity, and as to such property, it seems clear that the quoted language from *United States v. Yazell* becomes applicable.[7]

The Constitutional Questions

At the outset, serious doubt must be expressed as to whether the United States can properly attack the

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[7] *Supra*, p. 6.

constitutionality of Act 315 of 1940 before this Court. That issue was not raised as an affirmative claim in the government's pleadings in the District Court and it cannot now be asserted in the briefs before this Court. *Kewanee Oil & Gas Company v. Mossham-er*, 58 F.2d 711 (10th Cir. 1932); *Pigott v. Detroit, T. & I. R.R.*, 221 F.2d 736 (6th Cir. 1955); *United States v. Nudelman*, 104 F.2d 549 (7th Cir. 1939); *Alexander v. Daugherty*, 189 F.Supp. 956 (D.C.Wyo. 1960); *Gaines W. Harrison & Sons, Inc. v. J. I. Case Company*, 180 F.Supp. 243 (E.D.S.C. 1960); *Houck v. Eastchester Public Utility District*, 104 F.Supp. 588 (D.Alaska 1952); *Mount Tivy Winery, Inc. v. Lewis*, 42 F.Supp. 636 (N.D.Cal. 1942) and *White Cleaners and Dyers v. Hughes*, 7 F.Supp. 1017 (W.D.La. 1934). There has been no abrupt change in the law since this action was filed, *cf. Curtis Publishing Company v. Butts*, 351 F.2d 702 (5th Cir. 1965) and therefore the United States should be barred from asserting the constitutional questions since they were not affirmatively raised in the Lower Court.

Nevertheless, it can be effectively shown that the constitutional issues now raised by the Government are not valid.

The Application of Louisiana Act 315 of 1940 Does Not Violate Either the Property Clause or the Contract Clause of the United States Constitution.

It seems important at this point to analyze both the basic and juridical nature of the mineral rights originally reserved by the defendants in the two transfers

to the United States and of the rights and expectancies of the United States in hoping that these minerals would later revert to it. The latter under Louisiana law are termed "reversionary rights." The Court is referred to an excellent analysis of these subjects by the Fifth Circuit Court of Appeals in *United States v. Nebo Oil Company*,[8] where Act 315 of 1940 was applied and was found to be constitutional.

Under the civil law of Louisiana, there can be no separate corporeal mineral estate in oil and gas and in the rights to such minerals. The reservation of mineral rights creates only a servitude (easement under common law). That servitude is extinguished by the prescription (limitation) of ten years unless it is exercised within that time by user through drilling operations or production. However, such user of the servitude in this manner will interrupt prescription and preserve the rights for another ten years.[9]

Under the same civil law yardstick, estates in reversion are unknown to Louisiana law. As a result, the reversionary rights of the United States to the mineral rights involved here could not be sold during the existence of the outstanding servitudes in favor of defendants.[10] The nature of the Government's interest or expectancy to obtain the reversion of these mineral rights was succinctly explained in *Nebo* as follows:

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[8]*United States v. Nebo Oil Company*, 190 F.2d 1003 (5th Cir. 1951).

[9]*Frost-Johnson Lumber Co. v. Nabors Oil & Gas Co.*, 149 La. 100, 88 So. 723 (1921); *Louisiana Petroleum Co. v. Broussard*, 172 La. 613, 135 So. 1 (1931); *Lee v. Giauque*, 154 La. 491, 97 So. 669 (1923); La. Civ. Code Arts. 789, 3546 (1870).

[10]*Liberty Farms v. Miller*, 216 La. 1023, 45 So.2d 610 (1950).

> "We conclude that this so-called "reversionary interest" is nothing more than a mere expectancy, or hope, based upon an anticipated continuance without change of the applicable laws of prescription and cannot be regarded as a vested right protected by the Constitution."[11]

On this point, the Court held in *Nebo* that the decision of the Louisiana Supreme Court in *Whitney National Bank v. Little Creek Oil Company*[12] regarding the retrospective character of Act 315 of 1940 when applied to this expectancy or hope was an interpretation of the State statute which "is binding on this Court."

There is under Louisiana law another type of reservation of minerals which falls in the precise legal category as the ordinary mineral reservation just discussed. This comes into being when the parties to the contract establish a mineral servitude of uncertain and indefinite duration and provide for its conditional extinguishment. They thereby create a condition of "contractual prescription" which places the reservation in exactly the same legal status as an ordinary mineral servitude.

In the all-important advisory opinion rendered by the Louisiana Supreme Court in *Leiter*, the principles

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[11]*United States v. Nebo Oil Co.*, 190 F.2d 1003, 1009 (1951).
[12]*Whitney National Bank v. Little Creek Oil Company*, 212 La. 949, 33 So.2d 693 (1947).

governing the establishment of a period of contractual prescription were clearly enunciated as follows:

> "If the United States Supreme Court concludes, as argued by counsel for Leiter, that the reservation does not establish a servitude for a certain time or of specific duration but establishes one of uncertain and indefinite duration, and that it was the intention of the parties to fix by contract the period of liberative prescription, then Act 315 of 1940 is applicable and constitutional.
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> "Most mineral servitudes are not established for a fixed time. A servitude of indefinite duration is extinguished only when it is not exercised for a period of 10 years. Such a servitude created by mineral reservation in a sale to the government would, under Act 315 of 1940, be rendered imprescriptible and would never be lost by prescription, provided it was in existence at the time the 1940 act went into effect.
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> "To summarize in conclusion, it is our view, and we hold: First, that if the reservation in the Leiter deed is construed as establishing a mineral servitude for a definite, fixed, and specified time which has elapsed, then Act

315 of 1940 is not applicable and cannot be constitutionally applied; *and second, that if the reservation is construed as not establishing a servitude for a fixed, definite and certain time, and if it is decided that the provisions of the reservation show that the parties were stipulating for a period of contractual prescription for the conditional extinguishment of the mineral servitude created, then Act 315 of 1940 is applicable and constitutional. The interpretation of the contract is for the United States courts.*" (Emphasis added.)[13]

While recognizing the paramount right of the federal courts to construe finally the mineral reservation in *Leiter*, the Louisiana Supreme Court clearly evidenced its own conclusion that the mineral reservation in that case created a condition of contractual prescription which was subject to Act 315 of 1940.

By a mere reading of the plain language of the mineral reservations involved in this case, the inescapable conclusion must be reached that they established servitudes of indefinite and uncertain duration.[14] They were initially established for a period of ten years, at the expiration of which they were to expire unless drilling operations had been commenced. This provision merely restates the law of Louisiana as to mineral servi-

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[13]*Leiter Minerals, Inc. v. California Co.*, 132 So.2d 845, at 853, 854 (1961).

[14]The reservation in the condemnation acquisition, which is functionally identical to the reservation in the purchase acquisition, is quoted in full in Appendix A.

tudes. There then followed the key provision which clearly established a contractual prescription in the following language: "or so long thereafter [the 10 year period] as grantor shall conduct drilling or reworking operations thereon with no cessation of more than sixty (60) days consecutively until production results; and if production results, so long as such mineral is produced." There is nothing remotely resembling a fixed and definite period in this language; rather, the continuation of the servitude depends upon two uncertain and indefinite conditions, these being, first, whether Lake Misere would conduct drilling operations at sixty-day intervals and, secondly, whether production would result from these operations. These conditions fall in the indefinite and uncertain category far more clearly than the one involved in *Leiter* which did have several fixed dates.

The District Court in the present case held that "clearly the provisions of the reservations in the instant cases reveal that the parties were stipulating for a period of contractual prescription for the conditional extinguishment of the mineral servitudes."[15] The Fifth Circuit Court fully agreed.[16]

Once it is recognized that the mineral reservations in this case were of uncertain duration and provided for a period of contractual prescription, all of the Government's arguments in this application concerning

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[15] *United States v. Little Lake Misere Land Company, Inc.*, Civil No. 14,588 (W.D.La. 1971).

[16] *United States v. Little Lake Misere Land Company, Inc.*, 453 F.2d 360 (5th Cir., 1972)

the impairment of the Property Clause and Contract Clause of the Constitution become completely inapplicable. Under well-settled principles of both state and federal law, the laws of prescription and those limiting the time within which actions may be brought are retrospective in their operation. As to the state rule, see *DeArmas v. DeArmas*, 3 La.Ann. 526 (1848); *Shreveport Long Leaf Lumber Co., Inc. v. Wilson*, 195 La. 814, 197 So. 566 (1940); *State v. Alden Mills*, 202 La. 416, 12 So.2d 204 (1943). In *Whitney National Bank of New Orleans v. Little Creek Oil Company, Inc.*, 212 La. 949, 33 So.2d 693 (1947) the Supreme Court of Louisiana gave a retrospective effect to the very act involved in the present case (Act 315 of 1940), and this in connection with a reservation of minerals in a sale to the United States.

The federal law is equally as clear that statutes of limitations and the remedies created thereby do not form a part of the contract and may be modified or abrogated with respect to a pre-existing contract. *Ogden v. Sanders*, 25 U.S. (12 Wheat.) 213 (1827); *Campbell v. Holt*, 115 U.S. 620 (1885); *Atchafalaya Land Co. v. F. B. Williams Cypress Co.*, 258 U.S. 190 (1922) and *Chase Securities Corp. v. Donaldson*, 325 U.S. 304 (1945). In *Campbell v. Holt*, this Court even extended the rule to upholding state action in extending a statute of limitation after the right of action had been barred under the original statute, thereby restoring to the plaintiff his remedy. In enunciating this rather drastic conclusion, the Court noted, "It violates no right of his, there-

fore, when the legislature says time shall be no bar, though such was the law when the contract was made." *Chase Securities Corp. v. Donaldson* reaffirmed the *Campbell* case on this point.

No useful purpose would be served by discussing the several decisions offered by the United States in support of its Property Clause and Contract Clause arguments. All dealt with the impairment of rights that unquestionably were vested property or contract interests. It is clear that in the present case such a vested property right was not created by the "reversionary interest" of the United States with respect to the mineral rights reserved in these two transactions. Act 315 of 1940 could and did validly modify that reversionary interest so as to make the mineral rights of the defendants imprescriptible.

The Hostile Discrimination Charge

The Government suggests that Act 315 of 1940 singles out the United States and its lessees for hostile discrimination in the acquisition of interest in lands, this in violation of the Equal Protection Clause of the Fourteenth Amendment. The application for writ properly notes that there are no federal decisions holding the United States to be a "person" entitled to the protection of the Fourteenth Amendment and that this proposition was seriously questioned by this Court in *United States v. Burnison*, 339 U.S. 87, 95 (1950). The Government persists in its contention, however, that a state cannot discriminate against federal interests.

The hostile discrimination theory has twice been rejected by this Court, and the present contention of the Government represents the third frontal assault upon the law as firmly established. In *United States v. Fox*, 94 U.S. (4 Otto.) 315 (1877), this Court upheld a statute of the State of New York which had been construed to prevent the devise by will of the property of a decedent to the United States. The bequest to the Government was therefore nullified. The issue was again raised in *United States v. Burnison*, 339 U.S. 87 (1950), where the Court considered a California statute which prohibited an unrestricted testamentary gift to the United States, although it permitted such gifts to the State and its subsidiaries. The Court recognized that it was being called on to overrule the *Fox* case and firmly refused to do so. It found no arbitrary treatment of the Government and therefore rejected the claim of unconstitutional discrimination.

Factually, however, a situation of hostile discrimination simply does not exist in this case. By a separate statute, the State of Louisiana has imposed the identical imprescriptible rule on all acquisitions made by its own agencies. La. R.S. 9:5806B (Supp. 1972)[17]. Also, individual Louisiana citizens as well as governmental entities have been affected by legislation changing the rule of prescription. Prior to 1944, the law of Louisiana was firmly to the effect that the ownership of an interest in a mineral servitude by a minor suspended the running of prescription not only as to

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[17]It is interesting to note that the United States, while persisting in its claim of unilateral hostile discrimination, terms this equal treatment by the State of its own agencies as irrelevant. Fn. 8, p. 18, writ application.

the minor but also as to his major co-owners. Act 232 of 1944 changed this law to provide that:

> ". . . despite the fact that among co-proprietors of any mineral . . . right there may be . . . a minor, the liberative prescription shall nevertheless run against the co-proprietors not under legal disability."

The Supreme Court of Louisiana upheld this statute against constitutional attack in *Cooper v. Lykes*, 218 La. 251, 49 So.2d 3 (1950).

Miscellaneous

The Migratory Bird Conservation Act.

The Government's application invokes the Migratory Bird Conservation Act[18] and suggests that the decision below conflicts with the statutory scheme under which the Government acquired these lands pursuant to that statute. Apparently, the Government is seeking a decision that through the Act, Congress specifically preempted the field of government acquisitions to the exclusion of state law, thereby making applicable the *Clearfield Trust* doctrine. It is submitted that the exact opposite is true. By its very terms, the Migratory Act not only contemplated the application of state law, but actually invited such results as the enactment of Act 315 of 1940. First, the Act rather than overriding state law, recognized the rights of the several states by requiring that their consent to acquisitions by the United

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[18] 16 USC 715-715r. Subsection e is attached hereto as Appendix B.

States be given by legislative act before any purchases could be made.

Even more important is the language of Section 715e of the Act. In that section the Secretary of the Interior was required to insure safe title in the United States to the areas acquired, but this significant concession was then made:

> ". . . but the acquisition of such areas by the United States shall in no case be defeated because of rights-of-way, easements, and reservations which from their nature will in the opinion of the Secretary of the Interior in no manner interfere with the use of the areas so encumbered for the purposes of said sections. . . ."

It must be assumed that the Secretary in acquiring the lands involved in this suit, determined that a mineral reservation could properly be made that would not interfere with the use of the area as a game refuge. This is necessarily true since he contracted for the reservation under conditions that would have permitted mineral operations for ten years and then for the possible indefinite extension of the servitude through means other than Act 315, such as drilling and obtaining production within the original ten-year period. The present suggestions of the United States that the continuance of the mineral reservation through Act 315 would have an adverse effect upon the administration of the Migratory Act simply must give way to the determination of "no interference" that necessarily was made by the Secretary in connection with these acquisitions; and, of course, such a finding of fact by the

Secretary is conclusive. *Cf. Burfenning v. Chicago, St. P., M.& O. R.R.*, 163 U.S. 321 (1896).

The Government also suggests that the provisions of Section 715e making all reservations subject to the rules and regulations of the Secretary leave no room for State regulation. Here again it must be suggested that an opposite conclusion is indicated. What Section 715e is saying simply is that mineral operations under contractual reservations in game refuges will not interfere with the proper operation and maintenance of that refuge so long as the appropriate wildlife regulations of the Secretary are complied with in conducting those operations. This is merely a recognition that multiple use of these properties is feasible under proper safeguards.

Virtually every major game refuge in Louisiana contains substantial oil and gas fields, and these are being operated in almost complete harmony with the game refuge project. The Delta Migratory Water Fowl Refuge, which includes the Leiter Minerals properties, contains hundreds of producing wells. Production is also being obtained from portions of the Lacassine Refuge in which the properties involved in this suit are located. It is submitted, therefore, that neither from a legal nor a practical standpoint can the arguments of the United States that there will be undue interference with the refuge operations be supported.

The Condemnation Proceedings.

The application of the Government (page 19) stresses that a portion of the property was acquired by con-

demnation proceedings and that in this type of acquisition, the estates and interests created by declarations of taking must be determined by federal law. On this point, it is noteworthy that only a comparatively small portion of the property was acquired by condemnation, with the remainder having been purchased by a conventional deed.[19]

If Act 315 had purported to dictate the terms of the federal condemnation there would be force in the Government's argument. This is not the case at all. The Government chose to tailor its condemnation proceedings so as to permit a mineral reservation identical in terms with the ones employed in its conventional purchases. Obviously this was done in fairness to those from whom the property was taken and to insure a uniform type of mineral reservation. The net result, however, is that the Government deliberately chose to permit the mineral reservation and once having done this, the condemned lands were in exactly the same legal position as were those actually purchased.

CONCLUSION

There are no important federal questions here which require this Court to assert the supremacy of federal law under the United States Constitution or any specific Congressional Act with respect to these isolated land transactions. For the reasons previously given, the petition for a writ of certiorari should be denied.

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[19]The stipulation of fact shows that of the 12,625 acres of land involved, only 2,574.18 were acquired in the condemnation proceeding, whereas the remaining 10,048.01 acres were acquired by a conventional act of sale.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Austin W. Lewis, attorney for Little Lake Misere Land Company, Inc., et al, and a member of the Bar of this Court, hereby certify that copies of the foregoing brief have been served in accordance with Supreme Court Rules, Rule 33, Paragraph 2(a), by depositing three copies of said brief in the United States mail, air mail postage prepaid, addressed to Erwin N. Griswold, Esq., Solicitor General, Department of Justice, Washington, D. C. 20530.

New Orleans, Louisiana, _____, 1972.

AUSTIN W. LEWIS
Attorney of Record

APPENDIX A

The Lake Misere Reservation

Reserving unto the grantor, its successors, legal representatives and assigns, and specifically excepting from this acquisition, all the oil, gas, sulphur and other minerals in, on or under said land, together with the right of investigating, exploring, prospecting, drilling and mining for and producing said oil, gas, sulphur and other minerals, laying pipe lines, building tanks, power stations, telephone lines and other structures, thereon to produce, save, take care of, treat, store, transport and manufacture said minerals and housing the employees necessary for said purposes; which rights shall remain in force for a term of ten (10) years from the date of vesting of title in the United States and as long thereafter as oil, gas, sulphur or other mineral is produced from said land, or so long thereafter as grantor shall conduct drilling or reworking operations thereon with no cessation of more than sixty (60) days consecutively until production results; and, if production results, so long as such mineral is produced.

Provided further that at the end of said ten-year period of reservation, if not extended as hereinabove provided, or at the termination of any extended period in case the operation has not been carried on after said ten-year period as hereinabove provided, the right to mine, produce and market said oil, gas, sulphur or other mineral shall terminate at the end of said ten years, and the complete fee title to said lands shall thereby become vested in the United States.

Provided that forty per cent, (40%) of one-eighth (1/8) royalty of all oil, gas, sulphur and other minerals so removed shall be paid to the United States of America until the total royalties so paid to the United States shall equal the purchase price of $12,870.90.

APPENDIX B

The Migratory Bird Conservation Act
16 U.S.C. §715e

§ 715e.

The Secretary of the Interior may do all things and make all expenditures necessary to secure the safe title in the United States to the areas which may be acquired under sections 715-715d, 715e, 715f-715k, and 715l-715r of this title, but no payment shall be made for any such areas until the title thereto shall be satisfactory to the Attorney General, but the acquisition of such areas by the United States shall in no case be defeated because of rights-of-way, easements, and reservations which from their nature will in the opinion of the Secretary of the Interior in no manner interfere with the use of the areas so encumbered for the purposes of said sections, but such rights-of-way, easements, and reservations retained by the grantor or lessor from whom the United States receives title under said sections or any other Act for the acquisition by the Secretary of the Interior of areas for wildlife refuges shall be subject to rules and regulations prescribed by the Secretary of the Interior for the occupation, use, operation, protection, and administration of

such areas as inviolate sanctuaries for migratory birds or as refuges for wildlife; and it shall be expressed in the deed or lease that the use, occupation, and operation of such rights-of-way, easements, and reservations shall be subordinate to and subject to such rules and regulations as are set out in such deed or lease or, if deemed necessary by the Secretary of the Interior, to such rules and regulations as may be prescribed by him from time to time.

In the Supreme Court of the United States

OCTOBER TERM, 1972

No. 71-1459

UNITED STATES OF AMERICA, PETITIONER

v.

LITTLE LAKE MISERE LAND COMPANY, INC., ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

REPLY BRIEF

1. Respondents' brief in opposition suggests that the constitutional questions presented in the government's petition cannot be asserted in this Court because they were not "raised as an affirmative claim in the * * * District Court" (Br. in Opp. p. 9). On the contrary, these questions were presented to and decided by both courts below. The district court explicitly stated (Pet. App. A, p. 4a) that the government was contending that "if Act 315 of 1940 is interpreted as extending the [respondents'] * * * servitude in the minerals, it is unconstitutional" on the grounds set forth at pp. 11-18 of the petition, and rejected that contention, as well as the government's other arguments, on the authority of the court of ap-

peals' *Leiter Minerals* decision. The court of appeals also noted and rejected the government's contentions regarding the constitutionality of applying Act 315 to the mineral reservations involved here (Pet. App. C, pp. 17a–18a).

2. Our contention that federal law rather than state law governs the government's property rights in the lands in question would not, as respondents claim (Br. in Opp. p. 4), require the "modification and emasculation" of this Court's decision in *Leiter Minerals, Inc.*, v. *United States*, 352 U.S. 220. Although in that case the Court held that the Louisiana state courts should be permitted to construe Act 315 before the federal courts considered its constitutionality as applied to property belonging to the United States, the Court admonished that "[i]t need hardly be added that the state courts in such a proceeding can decide definitively only questions of state law that are not subject to overriding federal law" (352 U.S. at 229–230). As set forth fully in the petition (pp. 12–14, 18–20), we believe that the government's interest in these lands is subject to overriding federal law, and that for that reason the court of appeals erred in its view that state law governed in this situation.

This case therefore is fundamentally different from *Wallis* v. *Pan American Petroleum Corp.*, 384 U.S. 63, on which respondents rely (Br. in Opp. p. 7). That case involved a controversy between two private parties concerning whether an oil and gas lease was assignable. This Court concluded that state law controlled because, unlike the instant case, there was "no

significant threat to any identifiable federal policy or interest" (384 U.S. at 68).

For the foregoing reasons and for the reasons set forth in the petition, it is respectfully submitted that the petition for a writ of certiorari should be granted.

ERWIN N. GRISWOLD,
Solicitor General.

JULY—1972.

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In the Supreme Court of the United States

OCTOBER TERM, 1972

No. 71-1459

UNITED STATES OF AMERICA, PETITIONER

v.

LITTLE LAKE MISERE LAND COMPANY, INC., ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The opinion of the district court (Pet. App. A) is not reported. The opinion of the court of appeals (Pet. App. B) is reported at 453 F. 2d 360.

JURISDICTION

The judgment of the court of appeals (Pet. App. C) was entered on December 30, 1971. Pursuant to orders extending the time within which to file a petition for a writ of certiorari, the petition was filed on May 8, 1972. Certiorari was granted on October 10, 1972. The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

Pursuant to the Migratory Bird Conservation Act, the United States acquired land in Louisiana for a wildlife refuge by deed and by condemnation. The mineral rights were reserved to the former owners for a ten-year period (subject to extension if certain conditions regarding exploration and production were met), after which such rights were to vest in the United States. The ten-year period expired without the conditions for extension being met. The claim sustained below is that an intervening statute of Louisiana (Act 315 of 1940), passed after the United States acquired the land in question and providing that mineral rights reserved in land conveyances to the United States shall be "imprescriptible," had the effect of extending indefinitely the former owners' mineral reservations.

The questions presented are whether the Louisiana statute is applicable to these particular land acquisitions, and, if so, whether it can constitutionally be applied to defeat the government's valuable right to the minerals. More specifically, the issues are:

1. Whether the reservations of mineral rights in question are within the provisions of Louisiana Act 315, as construed under state law.

2. Whether application of Louisiana Act 315 to these mineral interests of the United States violates the Supremacy Clause, the Property Clause, the Contract Clause or the Fourteenth Amendment of the Federal Constitution.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

Constitution of the United States:

> Article I, Section 10, clause 1:
>
> No State shall * * * pass any * * * Law impairing the Obligation of Contracts * * *.
>
> Article IV, Section 3, clause 2:
>
> The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State.
>
> Article VI, clause 2:
>
> This Constitution, and the laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any thing in the Constitution or Laws of any State to the Contrary notwithstanding.
>
> Fourteenth Amendment, Section 1:
>
> * * * nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Act 315, Louisiana Statutes of 1940 (LSA–RS 9:5806) (Cum. Supp.) provides in pertinent part:

> A. When land is acquired by conventional deed or contract, condemnation or expropriation proceedings by the United States of America, or any of its subdivisions or agencies,

> from any person, firm or corporation, and by the act of acquisition, order or judgment, oil, gas or other minerals or royalties are reserved, * * * the rights so reserved * * * shall be imprescriptible.
>
> * * * * *

The pertinent provisions of the Migratory Bird Conservation Act of February 18, 1929 (45 Stat. 1222, as amended, 16 U.S.C. 715, *et seq.*), and of Act No. 12, Louisiana Statutes of 1892, are set forth in an Appendix hereto, at pp. 29–33, *infra.*

STATEMENT

The United States initiated this litigation in the United States District Court for the Western District of Louisiana to quiet title in it to lands in Louisiana which it had acquired by deed and by condemnation, pursuant to the Migratory Bird Conservation Act, for the Lacassine Wildlife Refuge.[1] The conveyances to the federal government reserved the mineral rights to the former owners. By their terms, the reservations subsequently expired and the mineral rights vested in the United States. The former owners or their successors in interest (collectively referred to herein as Lake Misere) claimed that Louisiana Act 315, enacted after the land involved here had been acquired by the United States, made inoperative the extinguishment provisions of the mineral reservations and they therefore owned the mineral rights. The district court con-

[1] The United States brought two separate suits for this purpose, under 28 U.S.C. 1345, which were consolidated pursuant to Rule 42(a), Fed.R.Civ.P. See the printed appendix in this Court ("App.") at pp. 22–27.

cluded (Pet. App. A) that the issues involved had been resolved in favor of Lake Misere's claim in *Leiter Minerals, Inc.* v. *United States,* 329 F. 2d 85 (C.A. 5), certiorari granted and judgment vacated with directions to dismiss as moot, 381 U.S. 413. Accordingly, it granted summary judgment for Lake Misere. The court of appeals affirmed *per curiam* (Pet. App. B) on the authority of its *Leiter Minerals* decision.[2]

1. *The present case.* The material facts were stipulated in the district court.[3] The United States, pursuant to its authority under the Migratory Bird Conservation Act, 16 U.S.C. 715 *et seq.,* acquired approximately 12,625 acres of land in Cameron Parish, Louisiana, by purchase on July 23, 1937, and by a condemnation judgment entered on January 25, 1939. This land forms a part of the Lacassine Wildlife Refuge under the jurisdiction of the Department of the Interior. The deed of purchase reserved "unto [the] vendor * * * all the oil, gas, sulpher and other minerals in, on or under said land, * * * for a term of ten (10) years from the date [hereof] * * * and as long thereafter as * * * mineral is produced from said land, or so long thereafter as [vendor] shall conduct drilling or reworking operations * * *" (App.

[2] The present case involves the issues that were left open by this Court when *Leiter Minerals* became moot. Since the decisions below were based on the court of appeals' decision in *Leiter Minerals*, that litigation is discussed in some detail at pp. 7–10, *infra*, and the court of appeals' opinion in that case (329 F. 2d 85) is set forth at Pet. App. D.

[3] The stipulation is appended to the district court's opinion (Pet. App. A, pp. 7a–14a). See also App. 22–27.

23). It further provided that "at the end of said ten-year period of reservation, if not extended * * *," the mineral reservation "shall terminate * * *, and the complete fee title to said lands shall thereby become vested in the United States" (*ibid.*). The judgment of condemnation contained a mineral reservation in favor of the prior owners which was identical in relevant part (App. 25).

None of the conditions that would extend the term of the reservations occurred during the ten-year period (App. 24, 26). In 1955, after the mineral rights had vested in the United States under the terms of the reservations, the United States issued oil and gas leases covering the lands in question. Lake Misere continued to claim the mineral rights, however, and executed various contracts in which it asserted that it owned such rights (App. 24, 26–27).

The district court concluded that the respective provisions of the reservations suggested that "the parties were stipulating for a period of contractual prescription for the conditional extinguishment of the mineral servitudes." It therefore held that it was "obligated to follow" the court of appeals' decision in *Leiter Minerals* since that decision was entitled to "stare decisis effect" despite the fact that the Supreme Court had vacated the judgment (Pet. App. A, pp. 6a–7a). Since the court of appeals in *Leiter Minerals* had determined that Louisiana Act 315 made prior contractual prescriptions ineffectual to extinguish a mineral res-

ervation, the district court sustained Lake Misere's claim and granted its motion for summary judgment.[4]

The court of appeals affirmed the district court's judgment "on the basis of the principles enunciated * * * in *Leiter*" (Pet. App. B, p. 17a). It rejected the government's constitutional contentions (*id. at* pp. 17a–18a).

2. *Leiter Minerals.* The relevant facts in the present case closely parallel those in *Leiter Minerals,* and the legal issues presented there were essentially the same as those involved here.

In 1938, the United States purchased certain lands in Plaquemines Parish, Louisiana, for a wildlife refuge under the provisions of the Migratory Bird Conservation Act. The deed of purchase contained a mineral reservation similar to the reservations in the present case, and, as here, the reservation expired according to its terms and the mineral rights vested in the United States.[5] Both the United States and the

[4] The government challenged the constitutionality of the statute in the district court on the several grounds asserted here (see Pet. App. A, p. 4a), but that court did not comment on the constitutional questions (*id.* at pp. 6a–7a).

[5] The *Leiter Minerals* reservation was also for a ten-year period. If mineral operations took place for "an average of at least 50 days per year" during the final three years of the specified term, the servitude would be extended for an additional five-year period, but only with respect "to an area of twenty-five acres of land" around each well or mine producing or being drilled at the "time of first extension." Additional five-year extensions could be obtained "from time to time" to permit completion of active drilling operations (329 F. 2d at 87).

former owner (Leiter) issued oil and gas leases covering the acquired lands.

The Leiter interests, claiming that they owned the mineral rights, brought suit in a Louisiana state court against the government's lessees. The claim was based on the provision of Louisiana Act 315 stating that "[w]hen land is acquired * * * by the United States * * * [and] minerals or royalties are reserved * * * the rights so reserved * * * shall be imprescriptible"; this language, it was contended, had the effect of extending Leiter's mineral reservation in perpetuity. The United States then instituted an action in federal court to quiet title. The federal district court, at the government's request, enjoined the state court proceedings (204 F. Supp. 560 (E.D. La.)), and the court of appeals affirmed the injunction (224 F. 2d 381 (C.A. 5)). This Court granted certiorari; it modified the injunction "to permit an interpretation of the state statute [Louisiana Act 315] to be sought * * * in the state court," and, with that change, affirmed (352 U.S. 220, 230).

A declaratory judgment proceeding was then initiated in state court to obtain a construction of Act 315, and the case ultimately reached the Supreme Court of Louisiana (*Leiter Minerals, Inc.* v. *California Co.*, 241 La. 915, 132 So. 2d 845). That court held that Louisiana Act 315 applies retroactively to mineral reservations outstanding when the statute was

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As in the present case, if none of the conditions specified in the deed occurred during the ten-year period, the reservation terminated "and complete fee in the land [became] vested in the United States" (*ibid.*).

enacted in 1940, although they were created before that date, and applies "to prescription whether established by statute or by contract" (241 La. at 940, 132 So. 2d at 854). The statute controls, however, only with respect to reservations establishing a mineral servitude "of uncertain and indefinite duration"; if the servitude is "for a certain time or of specified duration * * * then Act 315 of 1940 is not applicable * * *" (241 La. at 938, 935, 132 So. 2d at 853, 852). The court summarized its view of the Act as follows (241 La. at 942–943, 132 So. 2d at 854–855):

> First, that if the reservation in the Leiter deed is construed as establishing a mineral servitude for a definite, fixed, and specified time which has elapsed, then Act 315 of 1940 is not applicable and cannot be constitutionally applied; and second, that if the reservation is construed as [1] not establishing a servitude for a fixed, definite and certain time, and if it is decided [2] that the provisions of the reservation show that the parties were stipulating for a period of contractual prescription for the conditional extinguishment of the mineral servitude created, then Act 315 of 1940 is applicable and constitutional. The interpretation of the contract [the reservation] is for the United States courts.

The federal district court then decided the merits of the government's quiet title action (204 F. Supp. 560). It held that the reservation "provides a definite term" for the mineral servitude created thereby (*id.* at 567). Thus, "[u]nder the ruling of the Louisiana Supreme Court, * * * the reservation was not af-

fected by Act 315 of 1940," and "the servitude expired by its own terms and the mineral rights reverted to the United States" (*ibid.*). It was, accordingly, unnecessary for the court to resolve the government's contentions regarding the constitutionality of Act 315.

A divided court of appeals reversed (329 F. 2d 85). The majority rejected the argument that federal law controlled the rights of the United States under the reservation, and held, instead, that those rights were to be determined by reference to the law of Louisiana. In its view, the Louisiana Supreme Court had indicated that "Leiter's servitude was one of indefinite duration," and it agreed with that interpretation (Pet. App. D, p. 29a). Accordingly, the majority of the court concluded that, under state law, the reservation "provide[d] for a contractual prescription for the conditional extinguishment of the mineral servitude which was rendered inoperative by the Louisiana statutes" (*id.* at p. 35a). As to the government's contention that such an application of the Louisiana statute unconstitutionally impaired its contract, the majority stated that the discussion of the matter in its prior decision in *United States* v. *Nebo Oil Co.*, 190 F. 2d 1003, and in the Louisiana Supreme Court's *Leiter* opinion (241 La. at 941–942, 132 So. 2d at 854) made it "unnecessary further to labor" the point. Judge Gewin, dissenting, stated that he agreed with the district court; he would have affirmed on the ground that "[t]he reservation * * * was for a definite, fixed and specified time * * *" (*id.* at 37a).

ARGUMENT

INTRODUCTION AND SUMMARY

In holding that Louisiana Act 315 can be applied to the Lake Misere conveyances to abrogate rights acquired by the United States under the express terms of the mineral reservations, the court below improperly looked to state rather than federal law. While we contend that the government's rights under the mineral reservations involved here are exclusively a matter of federal law (see pp. 19–23, *infra*), we additionally urge that the court of appeals erred even on its own terms, by extending the reach of the state statute beyond the limits set by the Louisiana Supreme Court in *Leiter Minerals*. Although the construction of the 1940 statute by the highest state court is, of course, a determination of an issue of state law that is binding on the federal courts, the application of the "imprescriptible" provision (as so construed) to these particular mineral interests is a matter to be resolved by the federal courts in which the litigation has been brought. *Leiter Minerals* v. *California Co., supra,* 241 La. at 943, 132 So. 2d at 855.

Consideration of this threshold question of the statute's applicability in the present context is the logical starting point of our discussion, since the serious constitutional issues presented by the decision below need not be reached by this Court if it agrees with us that under state law Louisiana Act 315 is inapplicable to these facts. Our position on this point, as we explain below, is that the mineral reservations provided for in the deed of purchase and the

condemnation judgment did not by their terms create a period of "contractual prescription" of indefinite duration, but established, instead, a mineral servitude for a specified time. Accordingly, even if state law is controlling in this context—which we dispute—the court below erred in holding that the mineral interests reserved to the former owners in these conveyances could properly be extended perpetually by the 1940 statute.

This error, moreover, renders the Louisiana Act unconstitutional as applied. The decision below essentially permits each State, in the absence of an explicit congressional declaration to the contrary in the enabling legislation, to impose restrictions, including retroactive restrictions, on the manner and extent of land acquisitions by the national government. As we shall explain, such a result offends the Property and Supremacy Clauses of the Constitution by subjecting the interests of the United States in land to disposition by a State and to the idiosyncracies of local land law. In addition, an application of Louisiana Act 315 to these mineral interests violates the constitutional bar against impairment of contractual obligations in Article I, Sec. 10, by permitting the total abrogation of valuable rights previously acquired by the United States through contractual stipulation. And, finally, the statute is contrary to the equal protection concept in the Fourteenth Amendment, since it singles out the United States for hostile discrimination in the acquisition of interests in land.

In these several respects, as we elaborate below, the decision of the court of appeals is contrary to settled

principles of federal land law and of constitutional law, and it should not be permitted to stand.

I

THE MINERAL RESERVATIONS INVOLVED HERE ARE NOT COVERED BY LOUISIANA ACT 315 AS THAT STATUTE HAS BEEN CONSTRUED BY THE HIGHEST STATE COURT

Both the deed of purchase and the condemnation judgment in this case included reservations providing for a mineral servitude in favor of the former owners of the lands acquired by the United States. This servitude gave the sellers "a right to go upon the land and produce the minerals" (*Leiter Minerals, Inc.* v. *California Co., supra,* 241 La. at 931, 132 So. 2d at 850). As pointed out by the district court in *Leiter Minerals* (204 F. Supp. at 564; footnote omitted), "with respect to duration, there are two kinds of mineral servitudes: perpetual servitudes which prescription [for non-usage] alone will curtail, and servitudes for a term which end at the expiration of the time stipulated."[6]

[6] In Louisiana, there can be no separate estate in minerals apart from ownership of the surface. See *United States* v. *Nebo Oil Co., supra,* 190 F. 2d at 1007. The most that may be granted (or reserved) is a right to explore for and extract minerals, and that right expires automatically by the force of "prescription" if not exercised for 10 years. Under Louisiana law, private parties cannot validly stipulate that a mineral interest shall survive more than a decade of inactivity. See *United States* v. *Leiter Minerals, Inc., supra,* 204 F. Supp. at 564. The effect of Act 315 is to suspend the operation of the law of prescription when the landowner sells to the United States and reserves mineral rights; his right to extract the minerals is made "imprescriptible."

If, as the court of appeals held, Louisiana Act 315 controls the disposition of the government's present quiet title action—a point which we dispute *infra*, at pp. 19–23—the critical determination here is whether these mineral reservations contemplate perpetual or term servitudes. For the Louisiana Supreme Court has, as we earlier stated (p. 9, *supra*), construed the 1940 statute as applying the concept of imprescriptibility to perpetual servitudes only (*i.e.*, those of indefinite or uncertain length), holding that the Act does not affect the duration of servitudes for a specified term.

We submit that these reservations come within the latter category. By their terms, the servitudes were to "remain in force for a term of ten (10) years from the date of vesting of title in the United States * * *" (App. 23; and see App. 25). Nothing that the parties did, or failed to do, during that period (other than agreeing on a superseding arrangement) could extinguish the sellers' interests, by contractual prescription or otherwise. It is true, as the courts below emphasized, that the conveyances also provided for an indefinite extension, or renewal, of the servitudes if, at the end of the stipulated ten-year term, minerals were being produced or drilling operations were then in progress. To that limited extent perhaps it can be said that the reservations provided "for a period of contractual prescription for the conditional extinguishment of the mineral servitudes" (Pet. App. A, p. 6a; Pet. App. B, p. 17a). But the essential point in this regard is that this so-called "period of con-

tractual prescription" would begin to run only *after* the mineral servitudes for a term of ten years had ended, and, even then, only in the event that certain conditions existed as specified in the agreement.

This, we submit, is not the type of reservation that Louisiana Act 315 was intended to reach. As construed by the Louisiana Supreme Court, the statute purports to make "imprescriptible" only those reservations satisfying two distinct requirements: *viz.*, "*not* establishing a servitude for a fixed, definite and certain time, *and* * * * stipulating for a period of contractual prescription for the conditional extinguishment of the mineral servitude created * * *" (241 La. at 942; 132 So. 2d at 854–855; emphasis supplied). Here, however, the servitude was "fixed" and "definite." Thus, the parties' stipulation here "for a period of contractual prescription" with respect to any *renewal* of the servitude, after expiration of the stipulated ten-year term, meets, at best, only half of the two-pronged test announced by the state court. In these circumstances, we submit, the Act is not applicable.

Nor need we be concerned in this case with the separate question of the Act's applicability had the mineral servitude in fact been renewed; it is undisputed that no efforts were made to extract or produce the minerals during the specified term (App. 24, 26). The reservations thus terminated by their own terms at the end of the ten-year period. This is what the parties bargained for; since they did not contemplate a servitude of indefinite duration subject to a period

of contractual prescription (except in the unlikely event of a conditional renewal), the court below improperly held the already defunct servitudes to be "imprescriptible" under Louisiana Act 315.

Moreover, as we shall now show, application of the 1940 statute to these mineral reservations is constitutionally invalid on several grounds.

II

APPLICATION OF LOUISIANA ACT 315 TO THESE MINERAL RESERVATIONS VIOLATES THE PROPERTY, SUPREMACY AND CONTRACT CLAUSES OF THE FEDERAL CONSTITUTION AND IMPERMISSIBLY SINGLES OUT THE UNITED STATES FOR HOSTILE DISCRIMINATION IN THE ACQUISITION OF INTERESTS IN LAND

The Property Clause vests in Congress the "Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States * * *." Article IV, Sec. 3, cl. 2. The Supremacy Clause prescribes that the Constitution, laws and treaties of the United States "shall be the supreme Law of the Land * * *." Article VI, cl. 2. The Contract Clause specifies that no State shall pass any law "impairing the Obligation of Contracts." Article I, Sec. 10, cl. 1. Each of these constitutional provisions, as well as the Fourteenth Amendment's equal protection clause, precludes an application of Louisiana Act 315 in this case to limit or change the rights of the United States in lands that had been acquired by it before enactment of the 1940 statute.

A. *The Property Clause.*—The United States acquired the lands in issue here pursuant to the Migra-

tory Bird Conservation Act (*infra*, pp. 29–33), legislation enacted by Congress in 1929 in furtherance of a national program for the protection of wildlife. From the beginning, that Act contemplated acquisitions that would include reservations and other encumbrances in favor of the former owners, and, indeed, in 1935, the statute was amended to make it clear that reservations could be set forth in the conveyance. See H. Rep. No. 886, 74th Cong., 1st Sess., p. 2 (1935); and see Secs. 715d–1 and 715e of the Act, pp. 30–31, *infra*. But Congress also provided that the federal acquisition "shall in no case be defeated because of rights-of-way, easements, and reservations," and that such encumbrances "shall be subject to rules and regulations prescribed by the Secretary of the Interior * * *" (Sec. 715e, pp. 30–31, *infra*). While the United States could not under the Act acquire land for game-refuge purposes "unless the State in which the area lies shall have [first] consented by law * * *" (Sec. 715f, p. 31, *infra*), Louisiana had given its general consent to such federal acquisitions in 1892 (Act. No. 12, Louisiana Statutes of 1892, *infra*, p. 33).

There is no dispute that the conveyances to the government in this case, which contained carefully worded mineral reservations specifying, *inter alia*, the circumstances in which the mineral rights would vest in the United States, were proper in all respects and furthered a legitimate public interest. At the time, then, of these acquisitions—by the deed of purchase of 1937 and by the condemnation judgment in 1939—the lands became part of the federal domain, and thereby subject to the plenary and exclusive

control of Congress under the Property Clause. See *Ivanhoe Irrigation District* v. *McCracken*, 357 U.S. 275, 294–295; *Alabama* v. *Texas*, 347 U.S. 272, 273–274; *United States* v. *San Francisco*, 310 U.S. 16, 29–30; *Utah Power & Light Co.* v. *United States*, 243 U.S. 389, 404–405. Thereafter, only the federal government could make rules and regulations with respect to the acquired lands, and state law could not infringe on that power. *United States* v. *Allegheny County*, 322 U.S. 174, 182–183.

This is especially so here, since unlike the situation in *United States* v. *Nebo Oil Co.*, 190 F. 2d 1003 (C.A. 5), on which the court of appeals mistakenly relies, the parties to these conveyances did not stipulate to condition the government's "reversionary interest" in the mineral rights on the operation of the Louisiana ten-year prescription statute. Rather, it was bottomed squarely on the express terms of the deed of purchase and the condemnation judgment. Compare *Green Bay Canal Co.* v. *Patten Paper Co.*, 172 U.S. 58, 79–81; and see generally *Ashwander* v. *Tennessee Valley Authority*, 297 U.S. 288, 331–336. No provision was made therein for delays and detours—let alone defeats—that the State might impose by changes in the state law of prescription.[7] To the contrary, the clear understanding was, as is re-

[7] In *Nebo*, by contrast, the court of appeals concluded that the government's "so-called 'reversionary interest' is nothing more than a mere expectancy, or hope, based upon an anticipated continuance without change of the applicable laws of prescription * * *" (190 F. 2d at 1009). And see our discussion of *Nebo*, *infra*, at pp. 24–25.

flected in the Migratory Bird Conservation Act itself (see pp. 20–21, *infra*), that the mineral reservations included in these conveyances to accommodate the interests of both buyer and seller (see n. 8, *infra*) were to be controlled and regulated by the federal government, and could not be altered by the State or the former owners to defeat the property interest that the government had bought, and had bargained for and secured by private agreement.

The court below, however, held that a state statute enacted several years subsequent to the conveyances to the United States governs the federal government's property rights. Its application of Louisiana Act 315 to these land transactions has the effect of reducing the property interests that the government received under the conveyances by abrogating the agreed terms of the reservations. This, we submit, plainly constitutes a disposition of federal property by the State—a result squarely in conflict with the Property Clause, which confers on Congress, rather than the States, the "Power to dispose of * * * the Territory or other Property belonging to the United States."

B. *The Supremacy Clause.*—In addition, the decision below that the Louisiana statute applies here to make the Lake Misere reservations "imprescriptible" cannot be reconciled with the federal statutory scheme under which the government acquired these lands.

As we have indicated, reservations like those involved here are authorized by the Migratory Bird Conservation Act, but that statute explicitly provides that such reservations "shall be subject to the rules and

regulations prescribed by the Secretary of the Interior" (Sec. 715e, p. 31, *infra*). Furthermore, the reservations "shall be subordinate to and subject to such rules and regulations as are set out in [the conveyances] * * * or, if deemed necessary by the Secretary of the Interior, to such rules and regulations as may be prescribed by him from time to time" (*ibid.*).

Thus, the plan of the Migratory Bird Conservation Act is to insulate the federal interests acquired thereunder from subjection to the peculiarities of local land law. The statutory scheme leaves no room for state regulation of game-refuge acquisitions. On the contrary, the Act's premise is that the administrators of the federal program shall have full power to acquire the land interests they need while reserving to the former owners thereof whatever access to, or use of, the acquired property that may be deemed expedient and compatible.[8] Congress plainly intended

[8] Placing the responsibility in the Secretary of the Interior to determine whether to use reservations and, if so, what they should provide, gives federal authorities the flexibility needed to assure that land requirements for projects can be met. This may mean, as in the present case, that the government must settle for only the surface rights temporarily, with the mineral rights reserved to the former owner for a specified term. This form of reservation accommodates the interests of both seller and buyer. The former often wants an opportunity to explore for minerals, while the latter may be willing to forego the mineral rights for a specified time to reduce purchase costs. The United States uses a similar provision fixing a cut-off date for the period in which lessees of federal lands can explore for minerals (see the Mineral Leasing Act of 1920, 41 Stat. 443, as amended, 30 U.S.C. 226). The restrictions which the reservations impose on the rights of the former owners to extract minerals are all the more important in this case. The lands

that if reservations were included in the conveyances to the United States, they should have federally-defined consequences without regard to the vagaries of state law.[9]

The Supremacy Clause thus forbids the application of the Louisiana prescription statute in these circumstances. See *Ivanhoe Irrigation District* v. *McCracken, supra,* 357 U.S. at 295; *California Commission* v. *United States,* 355 U.S. 534, 544; *United States* v. *Allegheny County, supra,* 322 U.S. at 182–183; and cf. *Paul* v. *United States,* 371 U.S. 245. As this Court stated in *Ivanhoe* (357 U.S. at 295), "a State cannot compel use of federal property on terms other than those prescribed or authorized by Congress." Here, the United States, "exercising its constitutional func-

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were acquired for, and are being used as, a game refuge, and, unless carefully regulated, mineral development might well pose grave threats to this use. Compare 43 C.F.R. (April 1, 1964 Supp.) 3120.3–3, under which the leasing of refuge lands is generally barred. It is thus important to implementation of the policy objectives of the Migratory Bird Conservation Act that mineral reservations in government acquisitions of lands for wildlife refuges be limited to their express terms, rather than expanded, as under the decision below, by state statute.

[9] Section 715f of the Act (p. 31, *infra*), specifying that the States must give their consent by law before the United States can make acquisitions, does not indicate an intention to subject the acquisitions to the peculiarities of local land law. As already pointed out (*supra*, p. 17), Louisiana has consented to federal acquisitions. Having done so, the State has no further control over the acquisitions made under the authority of federal law. See, *e.g.*, the district court's first opinion in *United States* v. *Nebo Oil Co.*, 90 F. Supp. 73, 89–92 (W.D. La.), reviewing the long-standing position of federal officials that state law no longer applies to lands acquired by the federal government for forest purposes.

tions," acquired the lands in question in accordance with federal statutes empowering it to do so; hence "[t]he validity and construction of [its] contracts"—in this case the conveyances containing the reservations—and "their consequences on the rights and obligations of the parties, the titles or liens which they create or permit, all present questions of federal law not controlled by the law of any State." *United States* v. *Allegheny County, supra,* 322 U.S. at 183; see also *Ivanhoe Irrigation District* v. *McCracken, supra,* 357 U.S. at 289. The decision below that state law controls in this case is contrary to these well-settled principles.[10]

This is especially so as regards lands which the United States acquired by condemnation. "Condemnation involves essential governmental functions. * * * [W]here essential interests of the Federal Government are concerned, federal law rules unless Congress chooses to make State laws applicable." *United States* v. *93.970 Acres,* 360 U.S. 328, 332–333. Simi-

[10] The court of appeals based its conclusion on the proposition expressed in *Leiter Minerals* (329 F. 2d at 90) that "State law must govern in the absence of a federal statute making federal law applicable." Under this reasoning, unless Congress explicitly provides otherwise, each State is presumably free not only to impose restrictions on the manner and extent of land acquisitions the national government can make, but also to reduce the federal government's interest in property already acquired by altering local land laws. In addition to its inconsistency with the Property Clause (see pp. 16–19, *supra*), this view denies proper scope to legislation authorizing federal projects, such as the Migratory Bird Conservation Act, and, because of the wide disparity in local laws, would create serious practical problems in the implementation of numerous federal programs.

larly, the estates and interests created by declarations of taking are to be determined by federal law. See, *e.g., United States* v. *Pinson,* 331 F. 2d 759 (C.A. 5); *Bumpus* v. *United States,* 325 F. 2d 264 (C.A. 10); *United States* v. *Certain Interests in Property, Etc.,* 271 F. 2d 379 (C.A. 7). Since Congress has not made state law applicable here, there is no basis for depending on state law to define, or for permitting a State to change, the government's interest in the land it has acquired.

C. *The Contract Clause.*—The subordination of the federal acquisitions to state law in this case also violates Article I, Sec. 10, cl. 1, of the Constitution. Louisiana Act 315, as applied below, abrogates the express terms in the conveyances for extinguishment of the mineral reservations, and thus clearly impairs the obligation of the government's contracts.

The deed of purchase and the condemnation judgment in this case are unambiguous: the former owner retained a right to explore for and extract the minerals, and that right would expire in ten years unless certain requirements had been met to extend the term. Those requirements were not met, and under the terms of the conveyances the mineral rights which the former owners had reserved "terminate[d]" and "the complete fee title to said lands * * * [did] thereby become vested in the United States" (*supra,* p. 6).[11]

[11] Thus, here, as in *Leiter Minerals,* the government's property interest in the mineral rights flows directly from the conveyances, in contrast to the situation in the court of appeals' earlier decision in *Nebo Oil,* on which that court mistakenly relied in its opinion in *Leiter Minerals* (see *supra,* p. 18).

The property interest thus provided in favor of the United States conferred a double benefit. Not only would the right to minerals fully vest in the government if the former owners did not satisfy the conditions set; equally important, the United States would then be secure against any disturbance in its exclusive possession of these lands for use as a game refuge. The United States bargained for this future interest in the minerals; it was clearly agreed to in the conveyances and thus reflected in the consideration paid by the United States to the former owners. Yet the court of appeals ruled here, as in *Leiter Minerals,* that the subsequently-enacted Louisiana statute effectively erased this provision by rendering it inoperative. That result, we submit, is in direct conflict with the constitutional guarantee in the Contract Clause against impairment of contractual obligations. See *W. B. Worthern Co.* v. *Thomas,* 292 U.S. 426; *Pennsylvania Coal Co.* v. *Mahon,* 260 U.S. 393; *Barnitz* v. *Beverly,* 163 U.S. 118. Compare *El Paso* v. *Simmons,* 379 U.S. 497; *Home Building & Loan Association* v. *Blaisdell,* 290 U.S. 398.

Nor do we think that its previous decision in *United States* v. *Nebo Oil Co., supra,* cited by the court below, is authority to the contrary. That case involved an acquisition by the United States of lands in Louisiana for use as a forest reserve; the deed conveyed to the United States only the surface rights, subject to a prior disposition among third parties of all mineral rights. The question there was whether the government acquired the mineral rights, not by virtue of any

stipulation in its contract, but by operation of the Louisiana ten-year prescription statute. The court held (190 F. 2d at 1010) that the government's "hope" of acquiring title to the mineral rights under the law of prescription was a mere "expectation of servitude lapsed for nonuser"—not a contract right—which could be modified at the will of the State. Accordingly, there, Act 315 of 1940 was held effective to bar a prescriptive transfer of the mineral rights to the United States.[12] The situation here is fundamentally different. In the present case, the government's right—whether or not characterized as "contractual prescription"—is derived solely from the express provisions agreed to in the deed of purchase and the condemnation judgment; it depends in no degree upon the law of Louisiana. It is a property right of very substantial value, which was bargained for, reflected in the consideration paid, and specified in private contracts. Cf. *Hickman* v. *United States,* 135 F. Supp. 919 (W.D. La.), opinion on rehearing, 140 F. Supp. 759. Impairment of that right by a change in local law occurring after the

[12] The court pointed out that, there, application of Act 315 of 1940 *enforced*, rather than impaired, the express terms of the government's contract:

"All that Bodcaw [the government's grantor] had which it could sell to the United States was the timber land itself [the surface rights]. That was the obligation of the contract and it remains unimpaired [190 F. 2d at 1010]."

The district court emphasized the same point:

"Under such circumstances, it is impossible to contend that Act No. 315 of 1940 impairs the obligations of contract. On the contrary, it enforces the contractual obligations of the parties as they understood them at the time the sales were made [90 F. Supp. at 92]."

acquisition had been completed is constitutionally impermissible.

D. *The Fourteenth Amendment.*—The final reason why the application here of Louisiana Act 315 is unconstitutional is that it singles out the United States and its lessees for hostile discrimination in the acquisition of interests in land. Although others acquiring land can specify and pay for a period of contractual prescription for mineral reservations, the United States cannot. As pointed out by the federal district court in *Leiter Minerals* (204 F. Supp. at 563), "this discrimination directed against the federal government and its lessees" raises a substantial question under the equal protection clause of the Fourteenth Amendment.

There is no rational basis for this discriminatory treatment of federal land acquisitions under Act 315. The Louisiana Supreme Court in its *Leiter Minerals* decision (241 La. at 932–934, 132 So. 2d at 851–852) explained that the purposes of the Act were (1) to eliminate difficulties which the federal government had encountered in acquiring lands by permitting its grantors to reserve the minerals without application of the state prescription statute, and (2) to retain state control over the minerals so that the State could tax and apply its conservation measures to them. But the statute, because it has been construed by the highest state court to apply to some *contractual* provisions limiting the duration of mineral interests, goes too far as concerns the first matter; while it frees the United States and its grantors from statutory prescription, it also bars prescription by contract. There is no reason

why the United States, and those with whom it deals, should not be allowed to contract for prescription if they wish, like any other vendee and vendor. Nor does the Act really serve the other suggested objects—revenue and conservation. The United States is not prohibited from acquiring mineral rights, but instead only from acquiring them under a contract which gives the former owner a temporary period for exploration and production—a type of contract designed to encourage exploration of the minerals by the former owner, who would be liable to taxation and state conservation regulations.[13]

While there have been no federal appellate decisions holding that the United States is a "person" entitled to the protections of the Fourteenth Amendment, this may well be due to the fact that the same protection that the Fourteenth Amendment guarantees is ordinarily provided in the overriding principles of Federal-State relationships. See *McCulloch* v. *Maryland*, 4 Wheat. 316, 436.[14] At all events, even if it is "somewhat dubious" that the United States is a "person" in this context (see *United States* v. *Burnison*, 339 U.S.

[13] The fact that mineral reservations in conveyances to agencies of the state government are also made imprescriptible (Act 278, Louisiana Statutes of 1958 (LSA–RS 9: 5806B) (Cum. Supp.)) does not, we submit, support the "classification" of the United States under Act 315. While the State may be entitled to "discriminate" against itself in legislating with respect to its own agencies, that should not mean that it has the right to discriminate in applying legislation to others.

[14] See also *California Commission* v. *United States*, 355 U.S. 534; and cf. United States v. Georgia Public Service Commission, 371 U.S. 285, 293; Mayo v. United States, 319 U.S. 441, 445.

87, 95),[15] it is well settled that a State cannot, consistent with the equal protection concept, discriminate against federal interests (including federal lessees). See, *e.g.*, *Moses Lake Homes* v. *Grant County,* 365 U.S. 744. Cf. *Testa* v. *Katt,* 330 U.S. 386. Yet that is precisely what the decision below allows the State of Louisiana to do by upholding the application of Act 315 to the land acquisitions here.

CONCLUSION

For the foregoing reasons, the judgment of the court of appeals should be reversed.

Respectfully submitted.

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November 1972.

[15] The district court in *United States* v. *Nebo Oil Co.*, *supra*, 90 F. Supp. at 95, held that the United States is not a "person" within the meaning of the Fourteenth Amendment. Dicta to the same effect appear in *United States* v. *City of Jackson, Mississippi*, 318 F.2d 1, 7 (C.A. 5), and in *United States* v. *Biloxi Municipal School District*, 219 F. Supp. 691 (S.D. Miss.), affirmed, 326 F.2d 237 (C.A. 5). Apparently to the countrary is *United States* v. *Standard Oil Co. of California*, 21 F. Supp. 645, 659 (S.D. Cal.), affirmed, 107 F.2d 402, 417–419 (C.A. 9).

APPENDIX

Additional Statutes Involved

Migratory Bird Conservation Act of February 18, 1929, 45 Stat. 1222, 16 U.S.C. (1964 ed.) 715, *et seq.*:

> § 715a. A commission to be known as the Migratory Bird Conservation Commission, consisting of the Secretary of the Interior, as chairman, the Secretary of Commerce, the Secretary of Agriculture and two Members of the Senate, to be selected by the President of the Senate, and two Members of the House of Representatives to be selected by the Speaker, is created and authorized to consider and pass upon any area of land, water, or land and water that may be recommended by the Secretary of the Interior for purchase or rental under sections 715–715d, 715e, 715f–715k, and 715*l*–715r of this title, and to fix the price or prices at which such area may be purchased or rented; and no purchase or rental shall be made of any such area until it has been duly approved for purchase or rental by said commission. * * *
>
> § 715c. The Secretary of the Interior shall recommend no area for purchase or rental under the terms of section 715–715d, 715e, 715f–715k, and 715*l*–715r of this title except such as he shall determine is necessary for the conservation of migratory game birds.
>
> § 715d. The Secretary of the Interior is authorized to purchase or rent such areas as have been approved for purchase or rental by the commission, at the price or prices fixed by said commission, and to acquire by gift or devise, for use as inviolate sanctuaries for migratory birds, areas which he shall determine to be

suitable for such purposes, and to pay the purchase or rental price and expenses incident to the location, examination, and survey of such areas and the acquisition of title thereto, including options when deemed necessary by the Secretary of the Interior from moneys to be appropriated hereunder by Congress from time to time * * *.

§ 715d–1. When the public interests will be benefited thereby the Secretary of the Interior is authorized, in his discretion, to accept on behalf of the United States title to any land which he deems chiefly valuable for wildlife refuges, and in exchange therefor to convey by deed on behalf of the United States an equal value of lands acquired by him for like purposes, or he may authorize the grantor to cut and remove from such lands an equal value of timber, hay, or other products, or to otherwise use said lands, when compatible with the protection of the wildlife thereon, the values in each case to be determined by said Secretary. Timber or other products so granted shall be cut and removed, and other uses exercised, under the laws and regulations applicable to such refuges and under the direction of the Secretary of the Interior and under such supervision and restrictions as he may prescribe. * * *

§ 715e. The Secretary of the Interior may do all things and make all expenditures necessary to secure the safe title in the United States to the areas which may be acquired under sections 715–715d, 715e, 715f–715k, and 715l–715r of this title, but no payment shall be made for any such areas until the title thereto shall be satisfactory to the Attorney General, but the acquisition of such areas by the United States shall in no case be defeated because of rights-of-way, easements, and reservations which from their nature will in the opinion of the Secretary of the Interior in no manner interfere with the use of the areas so encum-

bered for the purposes of said sections, but such rights-of-way, easements, and reservations retained by the grantor or lessor from whom the United States receives title under said sections or any other Act for the acquisition by the Secretary of the Interior of areas for wildlife refuges shall be subject to rules and regulations prescribed by the Secretary of the Interior for the occupation, use, operation, protection, and administration of such areas as inviolate sanctuaries for migratory birds or as refuges for wildlife; and it shall be expressed in the deed or lease that the use, occupation, and operation of such rights-of-way, easements, and reservations shall be subordinate to and subject to such rules and regulations as are set out in such deed or lease or, if deemed necessary by the Secretary of the Interior, to such rules and regulations as may be prescribed by him from time to time.

§ 715f. No deed or instrument of conveyance shall be accepted by the Secretary of the Interior under sections 715–715d, 175e, 715f–715k, and 715*l*–715r of this title unless the State in which the area lies shall have consented by law to the acquisition by the United States of lands in that State.

§ 715g. The jurisdiction of the State, both civil and criminal, over persons upon areas acquired under sections 715–715d, 715e, 715f–715k and 715*l*–715r of this title shall not be affected or changed by reason of their acquisition and administration by the United States as migratory-bird reservations, except so far as the punishment of offenses against the United States is concerned.

§ 715i. No person shall knowingly disturb, injure, or destroy any notice, signboard, fence, building, ditch, dam, dike embankment, flume, spillway, or other improvement or property of the United States on any area acquired under sections 715–715d, 715e, 715f–715k, and 715*l*–

715r of this title, or cut, burn, or destroy any timber, grass, or other natural growth, on said area or on any area of the United States which heretofore has been or which hereafter may be set apart or reserved for the use of the Department of the Interior as a game refuge or as a preserve or reservation and breeding ground for native birds, under any law, proclamation, or Executive order, or occupy or use any part thereof, or enter thereon for any purpose, except in accordance with regulations of the Secretary of the Interior * * *.

§ 715k. For the acquisition, including the location, examination, and survey, of suitable areas of land, water, or land and water, for use as migratory bird reservations, and necessary expenses incident thereto, and for the administration, maintenance, and developmet of such areas and other preserves, reservations, or breeding grounds frequently by migratory game birds and under the administration of the Secretary of the Interior, including the construction of dams, dikes, ditches, flumes, spillways, buildings, and other necessary improvements, and for the elimination of the loss of migratory birds from alkali poisoning, oil pollution of waters, or other causes, for cooperation with local authorities in wildlife conservation, for investigations and publications relating to North American birds, for personal services, printing, engraving, and issuance of circulars, posters, and other necessary matter and for the enforcement of the provisions of sections 715–715d, 715e, 715f–715k, and 715*l*–715r of this title, there are authorized to be appropriated * * *.

§ 715s. (1958 ed.) Twenty-five per centum of all money received during each fiscal year from the sale or other deposition of surplus wildlife, or of timber, hay, grass, or other spontaneous

products of the soil, shell, sand, or gravel, and from other privileges on refuges established under sections 715–715d, 715e, 715f–715k, and 715*l*–715r of this title, * * * shall be paid at the end of such year by the Secretary of the Treasury to the county or counties in which such refuge is situated, to be expended for the benefit of the public schools and roads in the county or counties in which such refuge is situated * * *.

Act No. 12, Louisiana Statutes of 1892:

AN ACT

To cede jurisdiction to the United States over certain land and for the purchase and condemnation thereof.

Section 1. Be it enacted by the General Assembly of the State of Louisiana, That the United States shall have power to purchase or condemn in the manner prescribed by law, upon making just compensation therefor, any land in the State of Louisiana, not already in use for public purposes, required for custom houses, court houses, arsenals, national cemeteries, or for other purposes of the government of the United States.

Sec. 2. Be it further enacted, etc., That the United States may enter upon and occupy any land which may have been, or may be purchased or condemned, or otherwise acquired, and shall have the right of exclusive jurisdiction over the property so acquired during the time that the United States shall be or remain the owner thereof for all purposes, except the administration of the criminal laws of said State, and the service of civil process of said State therein, and shall hold the same exempt from all State, parochial, municipal, or other taxation.

Approved June 20, 1892.

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DEC 26 1972

MICHAEL RODAK, JR., C

IN THE

Supreme Court of the United States

October Term, 1972

No. 71-1459

UNITED STATES OF AMERICA,
Petitioner,

versus

LITTLE LAKE MISERE LAND COMPANY, INC., ET AL.,
Respondents.

On Writ Of Certiorari To The
United States Court Of Appeals For The Fifth Circuit

BRIEF OF RESPONDENTS, LITTLE LAKE MISERE LAND COMPANY, INC., ET AL.

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IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1972

No. 71-1459

UNITED STATES OF AMERICA,
Petitioner,

versus

LITTLE LAKE MISERE LAND COMPANY, INC., ET AL,
Respondents.

On Writ of Certiorari to the
United States Court of Appeals for the Fifth Circuit

BRIEF OF RESPONDENTS, LITTLE LAKE MISERE LAND COMPANY, INC., ET AL

QUESTIONS PRESENTED

The issues in this case may be narrowed and sharpened by a consideration of the following questions in addition to those suggested by the United States:

(1) Whether the question of the application of Louisiana Act 315 of 1940 to the reserved mineral rights involved in this case has been settled affirmatively by the prior decision of this Court in *Leiter Minerals, Inc.*

v. United States, 352 U.S. 220 (1957) and the subsequent advisory opinion of the Louisiana Supreme Court in *Leiter Minerals, Inc. v. California Company*, 241 La. 915, 132 So.2d 845 (1961), leaving for determination by this Court only the question of the constitutionality of the State statute as so construed and applied?

(2) Whether the Migratory Bird Conservation Act[1] can be invoked by the United States to override the law of Louisiana, where Congress in that Act not only refused to assert exclusive Federal jurisdiction, but, to the contrary, expressly reserved the State's jurisdiction over the properties acquired by the United States?

SUMMARY OF ARGUMENT

The decision of this Court in *Leiter Minerals, Inc. v. United States*, 352 U.S. 220 (1957) specifically demands that the law of Louisiana, in particular Act 315 of 1940, be applied in the resolution of this case. The Government's argument that federal law must be applied would lead to the emasculation of the *Leiter* decision. Even aside from *Leiter*, there are numerous authorities demanding application of state law in isolated acquisitions of land such as are involved here.

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[1]Act of February 18, 1929, 45 Stat. 1222, 16 U.S.C. 715 et seq., (Supp. 1972) (*infra*, pp. 2a-4a).

Under state law, clearly controlling here, the mineral reservations involve servitudes of uncertain and indefinite duration, and therefore present cases of contractual prescription. The advisory opinion of the Louisiana Supreme Court in *Leiter Minerals, Inc. v. California Company,* 241 La. 915, 132 So.2d 845 (1961) is direct authority that under state law, Act 315 can constitutionally be applied to render imprescriptible the mineral rights of respondents.

Finally, the reversionary right to the minerals possessed by the United States is a mere hope and not a vested property interest, and cannot serve as a basis for the constitutional issues raised untimely by the United States.

ARGUMENT

I.

State Law Rather Than Federal Law Must Be Applied In Determining The Government's Present Claim To The Mineral Rights In These Properties.

Pretermitting at this point the constitutional questions raised by the United States, the initial issue is whether in connection with these two isolated acquisitions of Louisiana real property by the Government, federal law or the law of Louisiana is controlling. The United States argues that federal law must be applied, which in effect is a contention that this Court should ignore Act 315 of 1940 and the interpretation of that statute made by the Supreme Court of Louisiana.

The end result of upholding the Government's arguments on this point would be the modification and emasculation of the prior decision of this Court in *Leiter Minerals, Inc. v. United States*, 352 U.S. 220 (1957) (herein *Supreme Court — Leiter*). A brief review of the somewhat turbulent history of the *Leiter* litigation will readily substantiate this statement.

As in the present case, the federal judicial proceedings in *Leiter* commenced with a District Court action by the Government to quiet its title to mineral rights that had been reserved from a sale to the United States. After wending its way through the District Court[2] and the Fifth Circuit Court of Appeals[3], writ of certiorari was granted by this Court which resulted in its 1957 ruling in *Supreme Court — Leiter*.[4] Squarely before the Court were the questions (1) of whether Louisiana Act 315 of 1940 should be applied and, if so applied, (2) of the proper interpretation of that statute. The Court, through Justice Frankfurter, then ruled quite explicitly that the interpretation of the 1940 Louisiana statute was a matter of State law and that, therefore, a construction of the Act should be obtained from the Louisiana Supreme Court. In so doing, this was said:

> "... The Supreme Court of Louisiana has never considered the specific issue or even discussed generally the rationale of the statute, especially with reference to problems of con-

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[2]*United States v. Leiter Minerals, Inc.*, 127 F.Supp. 439 (E.D.La. 1954).

[3]*Leiter Minerals, Inc. v. United States*, 224 F.2d 381 (5th Cir. 1955).

[4]*Leiter Minerals, Inc. v. United States*, 352 U.S. 220 (1957).

> stitutionality. The District Court recognized the importance of the statute in deciding this case; it also recognized that a problem of interpretation was involved, that the statute cannot be read by him who runs. What are the situations to which the statute is applicable? Is the statute merely declaratory of prior Louisiana law? What are the problems that it was designed to meet? The answers to these questions are or may be relevant. Before attempting to answer them and to decide their relation to the issues in the case, *we think it advisable to have an interpretation, if possible, of the state statute by the only court that can interpret the statute with finality, the Louisiana Supreme Court.*" (352 U.S. at 229) (Emphasis added.)

Clearly, therefore, the present request of the Government that federal law be applied over state law irrespective of any federal constitutional questions is asking this Court to hold that it did a vain and useless thing in *Supreme Court — Leiter* in directing the remand of the case to the Louisiana Supreme Court for an interpretation of the state act. Surely the federal law would have been applied in the original *Leiter* case if, in fact, state law could not be considered.

In a prior brief,[5] the Government asserted that it is not attempting to modify *Supreme Court — Leiter* by its argument that federal law should prevail over

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[5]Reply brief of the United States on petition for writ of certiorari.

state law in the case. It justified its position by referring to the statement in the prior decision that the state court in the advisory proceeding "can decide definitively only questions of state law that are not subject to overriding federal law". (352 U.S. at 229-230.) Respondents submit that the "overriding federal law" referred to by Justice Frankfurter was the federal constitutional issue that would be presented by the application of Act 315 of 1940 to the Leiter servitude. This Court has itself so construed its decision in *Supreme Court — Leiter*. In that very opinion, this was said:

> "In fact, where questions of constitutionality are involved — and the Government contends that an application of the state statute adverse to its interests would be unconstitutional — our rule has been precisely the opposite: 'as questions of federal constitutional power have become more and more intertwined with preliminary doubts about local law, we have insisted that federal courts do not decide questions of constitutionality on the basis of preliminary guesses regarding local law.'" [Citing authorities.] (352 U.S. at 228-229.)

In subsequent decisions Leiter was interpreted only as authority for the postponement of the exercise of federal jurisdiction in cases "presenting a federal constitutional issue which might be mooted or presented in a different posture by a state court determination of *pertinent* state law." *County of Allegheny v. Frank Mashuda Company*, 360 U.S. 185, 189 (1959). (Empha-

sis added.) *See also United Gas Pipe Line Company v. Ideal Cement Company*, 369 U.S. 134, 135-136 (1962). Therefore, having called for and received the advisory opinion from the highest court in Louisiana, this Court is bound to apply Act 315 of 1940 to the mineral rights reserved in the transfers to the United States; and there remains for consideration only the narrow issue of the constitutionality of the Act as so construed and applied.

Completely aside from the *Supreme Court — Leiter* decision, the rule is clear that where only specific and isolated acquisitions of real property are involved and in the absence of specific Congressional action pre-empting the field in connection with the acquisitions, state law is uniformly applied to such transactions. This is based on the fundamental and valid concept that the states possess the power to regulate the tenure of real property within their respective limits and the modes of its acquisition and transfer. *United States v. Yazell*, 382 U.S. 341 (1966); *United States v. Burnison*, 339 U.S. 87 (1950); *Davies Warehouse Co. v. Bowles*, 321 U.S. 144 (1944); *Sunderland v. United States*, 266 U.S. 226 (1924); *Mason v. United States*, 260 U.S. 545 (1923) and *United States v. Fox*, 94 U.S. (4 Otto) 315 (1877). In *United States v. Fox*, the rule was expressed in this language:

> "It is an established principle of law, everywhere recognized, arising from the necessity of the case, that the disposition of immovable property, whether by deed, descent or any

> other mode, is exclusively subject to the government within whose jurisdiction the property is situated. The power of the State in this respect follows from her sovereignty within her limits, as to all matters over which jurisdiction has not been expressly or by necessary implication transferred to the Federal government." (94 U.S. at 320).

The *Fox* decision was expressly reaffirmed by this Court in *United States v. Burnison*, with the Court stating, "We shall not overrule the Fox case, and, of course, we find no distinction between realty and personalty."[6]

The more recent decision of *United States v. Yazell, supra*, probably is the most direct authority on this point that can be offered. In that case, this Court ruled that in the absence of specific Congressional action, the federal court should not override state law unless compelled to do so by clear and substantial interests of the national Government; and at that point this was said:

> "The decisions of this Court do not compel or embrace the result sought by the Government. None of the cases in which this Court has devised and applied a federal principle of law superseding state law involved an issue arising from an individually negotiated contract." (382 U.S. at 353.)

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[6] 339 U.S. at 93.

Wallis v. Pan American Petroleum Corporation[7] furnishes another clear example of the rule that state law rather than federal law should be applied even to the interpretation of a federal mineral lease so long as there are no overriding national interests to protect.

The Government's brief does not consider any of these decisions. Its argument that federal law must be applied here is largely buried in its discussion of the constitutional issues (page 21, et seq.); and the decisions principally relied on are *Ivanhoe Irrigation Dist. v. McCracken*, 357 U.S. 275 (1958) and *United States v. Allegheny County*, 322 U.S. 174 (1944). Neither is apposite. *Ivanhoe*, dealing with a water contract, clearly was a situation involving a contract relating to the disposition of the Government's own property (water) produced under federal authority. *Allegheny County* involved the question of state taxation of federal property after the title to the property was acknowledged to be in the Government. These decisions and all of those relied on by the United States presented situations either (1) where the action of the Government was derived from constitutional authority, (2) where the necessity for a uniform application of a federal statute national in scope was apparent, (3) where some significant threat to the constitutional functions of the United States would otherwise be present or (4) where Congress clearly had established exclusive federal legislative jurisdiction. In the present case we are dealing only with individual acquisitions of Louisiana real property by the United States and

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[7] 384 U.S. 63 (1966).

as was said in *United States v. Yazell, supra,* "None of the cases in which this Court has devised and applied a federal principle of law superseding state law involved an issue arising from an individually negotiated contract." (382 U.S. at 353).

In its argument that "Federal Law" controls and must be applied, the Government failed signally to point out to the Court what "Federal Law" is being applied. Aside from the constitutional issues, what are the federal legal principles that would be invoked to construe and regulate the nature, duration and effect of this Louisiana mineral servitude? This question is particularly appropriate since the mineral servitude is a property concept completely unique to Louisiana.

Obviously there is no federal statute dealing with a Louisiana mineral interest. In this type of situation (and even assuming the application of Federal Law) the Court would be forced to apply the principles of general contract law. *Priebe & Sons v. United States,* 332 U.S. 407, 411 (1947).

The only general contract law appropriate to these servitudes would be the law of Louisiana, since the situs of real property governs the effect of contracts dealing with such property. *United States v. Fox* and *United States v. Burnison, supra.* Respondents suggest, therefore, that the federal law — state law argument really presents nothing substantial since the same result will obtain under either approach. Therefore, we are back to the supervisory opinion of the Louisiana Supreme Court on the precise subject with which this Court must deal.

II.

The Mineral Reservations Involved Here Clearly Are Covered By Louisiana Act 315, As That Statute Has Been Construed By The Louisiana Supreme Court.

The Government's brief (pages 13-16) asserts that even assuming the application of state law, Act 315 of 1940 does not apply to the servitudes of respondents because the reservations were made for a specified term. To say the least, the contention is rather startling. It is squarely contrary to the interpretations given by both courts below and, more importantly, it represents a complete misconstruction of the specific holding of the Louisiana Supreme Court in its advisory opinion.[8]

The Lake Misere reservations (*infra*, page 1a) provided that the reserved mineral rights would remain in force for a term of ten years *and as long thereafter* as minerals are produced or drilling operations are continued at fixed intervals. It then provided that if at the end of the ten-year period the rights had not been extended by operations or production, the servitudes would terminate.[9] As we understand the Gov-

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[8] *Leiter Minerals, Inc. v. California Company*, 241 La. 915, 132 So.2d 845 (1961).

[9] The Lake Misere reservations track the statutory law of Louisiana governing mineral servitudes much more closely than did the Leiter servitude, which had several time and acreage restrictions. For example, a drilling well at the end of 10 years would only hold 25 acres under the Leiter servitude, whereas such a well would extend the entirety of each of the Lake Misere

ernment's argument, it is to the effect that the original reference to the ten-year period caused the servitude to be one for a fixed and certain time and that the parties' agreement for a period of contractual prescription related only to the renewal of the servitude.

Complete answers to the Government's erroneous construction of the Lake Misere servitudes are found in the following excerpts from the advisory opinion of the Louisiana Supreme Court in *Leiter:*

> "Counsel for Leiter argue with much force that the reservation does not establish a servitude for a fixed or certain time. If this is true, the Louisiana law on servitudes of specific duration, set forth by us above in our discussion of the government's lessees' contention, is without application.
>
> "Most mineral servitudes are not established for a fixed time. A servitude *of indefinite duration* is *extinguished* only when it is not *exercised* for a period of *10 years*. Such a servitude created by mineral reservation in a sale to the government would, under Act 315 of 1940, be rendered imprescriptible and would never be lost by prescription, provided it was in existence at the time the 1940 act went into effect

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servitudes. This is exactly the result obtained from statutory prescription under Louisiana law, and the only contractual limitation was that thereafter drilling must be continuous until production was obtained.

(241 La. at 938, 132 So.2d at 843.) (Emphasis added.)

* * * *

"Nevertheless contracting parties are at liberty to establish a contractual period of prescription for the conditional extinguishment of the servitude through non-use, provided the period is *10 years* or less. (241 La. at 940, 132 So. 2d at 853-854.) (Emphasis added.)

* * * *

"Where mineral rights in lands sold to the United States government are reserved for a certain, definite, and fixed time *in the contract*, or, in other words, where the servitude has been established for a certain or fixed time, at the expiration of the time fixed the servitude is lost or extinguished; and since in such a case there is no question of prescription, Act 315 of 1940 is without application."[10] (241 La. at 937, 132 So.2d at 853.) (Emphasis added.)

Two things are crystal-clear from the quotations just given. The first is that, contrary to the Government's argument, reference to a period of ten years does not prevent the servitude from being of indefinite duration if its extinguishment at the end of the ten-year period is uncertain. Secondly, the reservations must be tested by the question of whether or not, *as initially established*, they were for a fixed or certain time or

[10]The references to the 10-year period are based on the statutory

they were of indefinite duration. The Government's brief recognizes (page 14) that the conveyance provided for "an indefinite extension, or renewal, of the servitudes *if* at the end of the stipulated ten-year term, minerals were being produced or drilling operations were then in progress." (Emphasis added.) The Government then concedes that to that extent, the reservations did provide for a period of contractual prescription for conditional extinguishment of the mineral servitudes.[11]

When these concessions by the United States are viewed in the light of the clear mandate of the Louisiana Court that the nature of the servitude must be determined as of the time it is established, the Government actually is conceding that the Lake Misere reservations were of indefinite duration and therefore presented cases of contractual prescription. This must follow because it is completely obvious that at the time that the servitudes were created by the reservations, it was impossible for either party to know whether they would be extended beyond the ten-year period by drilling operations or production.

The Louisiana Supreme Court in its advisory opinion cited as an example of a servitude of specific duration

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liberative prescription of 10 years provided for by Louisiana Civil Code Articles 789 and 3546.

[11]"It is true, as the courts below emphasized, that the conveyance also provided for an indefinite extension, or renewal, of the servitudes if, at the end of the stipulated ten-year term, minerals were being produced or drilling operations were then in progress. To that limited extent perhaps it can be said that the reservations provided 'for a period of contractual prescription for the conditional extinguishment of the mineral servitudes'

the one created by the mineral reservation considered in *Hodges v. Norton,* 200 La. 614, 8 So.2d 618 (1942). That reservation provided:

> "... and there is specifically reserved, *for a period of Fifteen years from and after this date* an undivided one-half interest in and to all oil, gas and mineral rights. . . ." (200 La. at 617-618, 8 So.2d at 619.) (Emphasis added.)

The Louisiana court then made this significant comment concerning the Hodges reservation:

> "Counsel for the government's lessees argue that the mineral reservation in that case is similar to the reservation in the Leiter deed. For what it may be worth, *our opinion is that it is not.*"[12] (Emphasis added.)

If the Louisiana Supreme Court found that the Leiter reservation, with its several time restrictions, was not one for a fixed and certain term, clearly the Lake Misere servitudes cannot be placed in that category.

When it is recognized, as indeed it must be, that these reservations created cases of contractual prescription, there can be no doubt but that Act 315 is controlling. The Louisiana Court squarely held that the statute applied equally to both statutory and contractual prescriptions, saying:

(Pet. App. A, p. 6a, Pet.App. B, p. 17a)." Page 14, Brief of the United States.

[12]*Leiter Minerals Inc. v. California Company,* 241 La. 915, 936, 132 So.2d 845, 852 (1961).

> "'The act [315 of 1940] draws no distinction between statutory and contractual prescription, and, as we view the matter from the history of the act and the objects and purposes for which it was adopted, it is manifest that the Legislature intended the act to be applicable to prescription whether established by statute or by contract where prescription had not already accrued at the time the act became effective.'"[13]

This is the clear rule that the United States has steadfastly refused to accept. It continues to argue that even if a case of contractual prescription is involved, it held a vested contract right which could not be impaired. Respondents assert to the contrary that this case presents nothing more than would be involved with an ordinary statutory servitude such as that considered by the Fifth Circuit Court in the *Nebo*[14] case and that, therefore, the Government held only an expectancy or hope which was validly abrogated by Louisiana Act 315 of 1940.

The District Court in the present case held that "[C]learly, the provisions of the reservations in the instant cases reveal that the parties were stipulating for a period of contractual prescription for the conditional extinguishment of the mineral servitudes."[15] The Fifth Circuit Court of Appeals quoted this language of the District Court approvingly and added: "Thus,

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[13] *Leiter Minerals, Inc. v. California Company*, 241 La. 915, 939, 132 So.2d 845, 854 (1961).

[14] *United States v. Nebo Oil Company*, 190 F.2d 1003 (5th Cir. 1951).

[15] *United States v. Little Lake Misere Land Company, Inc.*, Civil Action No. 14588 (W.D.La. 1971). *See* Appendix 43, et seq.

under Act 315 the mineral reservations were imprescriptible."[16]

III.

The Migratory Bird Conservation Act Invites Rather Than Rejects The Application Of State Law To The Mineral Servitudes Involved In This Case.

Woven throughout the Government's brief is the argument that the Migratory Bird Conservation Act[17] established a national program for the protection of wildlife which insulated the federal interests acquired under it from local land law and required the application of federal law. The statute does no such thing; to the contrary, it compels the opposite conclusion that Congress deliberately invited the application of state law to the acquisitions made under the Act.

There can be no doubt but that Congress could have preempted the field in the national interest in adopting this statute. The Outer Continental Shelf Lands Act (43 U.S.C. 1333a) is a clear example of the adoption of an area of exclusive federal jurisdiction. As was said by this Court of that statute in *Rodrigue v. Aetna Casualty & Surety Company*, 395 U.S. 352, 365 (1969), "the applicable law was made federal law enforceable by federal officials in federal courts."

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[16] *United States v. Little Lake Misere Land Company, Inc.*, 453 F.2d 360, 362 (5th Cir. 1971).

[17] *Infra*, pp. 2a-4a.

The stark contrast between the OCS Act and the Migratory Bird Conservation Act can readily be seen through the following analysis of the latter statute:

(1) The Migratory Act did not establish a national policy for the purchase *in fee* of properties for the conservation of migratory game birds. Section 715d authorized the Secretary of the Interior to purchase *or rent* such properties.

(2) Section 715e specifically authorized the purchase of lands subject to rights of way, easements and reservations which in the opinion of the Secretary would not interfere with the use of the areas for wildlife purposes.[18]

(3) Section 715e also provided that any reservations or other rights retained by the grantor would be subject to the wildlife regulations of the Secretary and that "it shall be expressed in the deed or lease" that the reservation would be subordinate to these regulations. Neither the deed nor the judgment in this case had any "expression" whatever concerning the regulations. See App., pp. 29 and 38.

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[18]The insertion of the mineral reservation in the conveyance and judgment of condemnation is of itself clear evidence that the Secretary of the Interior had determined that mineral exploration and the existence of mineral servitudes affecting the game refuge would not interfere with the use of the refuge.

(4) Rather than preempting the field, Section 715f prohibited any acquisition under the Act unless the State shall have first consented to that acquisition. That consent was not obtained in connection with these acquisitions.

(5) In lieu of establishing exclusive federal jurisdiction, Section 715g expressly preserved the jurisdiction of the State over the areas to be acquired.

In arguing that the Migratory Act requires the application of federal law to any acquisitions made under its terms, the Government fails completely to distinguish between congressionally established federal legislative *jurisdiction* and federal *title* to the land. The OCS Act previously discussed is an example of the first; the acquisition of properties under the Migratory Act is an equally clear example of the second. Where Congress makes no specific provision for the application of federal law, state law will be applied, and in these situations, only the federal title to the land is involved.

While the United States refuses in this case to recognize that the Migratory Act did not establish exclusive federal jurisdiction over the lands acquired under its terms, the Department of Justice has previously done so. In a publication by the Lands Division of the Department entitled "Federal Eminent Domain", Section 32B, page 238, et seq. (*infra,* pp. 4a-6a, et seq.) an extended discussion was made of the Weeks Fores-

try Act (16 U.S.C. 480)[19] and the Migratory Bird Conservation Act. In discussing the two acts, this was said:

> "*Under the Migratory Bird Conservation Act, the Secretary of Agriculture may accept no deed to land acquired unless the consent of the state is given by law.* Under the Upper Mississippi River Wild Life & Fish Refuge Act the land may not be acquired until the consent of the legislature of the state to the acquisition in fulfillment of the purpose of the Act is had. The proviso as to purpose in two of the Acts seems to mean that if the land were diverted to some other purpose, the consent would be inoperative. *In the Weeks Act and the Migratory Bird Conservation Act it is specifically provided that the states shall not lose their jurisdiction over the land acquired, and jurisdiction is consequently the same as if no state consent had been given, even when the property continues to be used for the purpose for which it was taken.* Since it thus appears the consent required by both of these Acts, unlike that required by Section 355 of the Revised Statutes prior to the 1940 amendment, *is not for the purpose of vesting in the United States exclusive jurisdiction over the sites,* such consent cannot be regarded as dispensed with by that amendment. Because the Upper Mississippi River Wild Life & Fish Refuge Act is so similar in

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[19]This statute, which is identical in its purpose and scope with the Migratory Act, was the one considered in *United States v. Nebo Oil Company, Inc.*, 190 F.2d 1003 (5th Cir. 1951).

nature to the Weeks Forestry and Migratory Bird Acts, it is probable that the consent provision embodied therein was likewise not designed to vest exclusive jurisdiction in the United States and therefore is also not dispensed with by the 1940 amendment." (Footnotes and footnote references omitted.)[20]

Remembering the striking similarity between the Weeks Act and the Migratory Act, the decision of this Court in *Wilson v. Cook*, 327 U.S. 474 (1946) is significant. In holding that the State of Arkansas retained jurisdiction over lands acquired under the Weeks Act, this was said:

"Hence the statute [the Arkansas consent statute] cannot be taken as having yielded or intended to surrender to the Federal Government the state legislative jurisdiction over the area in question, so far as exercise of that jurisdiction is consistent with federal functions. Any doubt as to the effect of such a grant by the state in conferring exclusive legislative jurisdiction over the territory which is acquired by the Federal Government *is removed by the provisions of the federal statute.*

"Section 12 of the federal statute, authorizing the purchase, provided:

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[20]United States Department of Justice, Federal Eminent Domain, a Manual prepared in the Lands Division of the Department of Justice under the direction of Attorneys General Homer Cummings, Frank Murphy and Robert H. Jackson. Washington, U.S. Government Printing Office (1940).

> 'That the jurisdiction, both civil and criminal, over persons upon the lands acquired under this Act shall not be affected or changed by their permanent reservation . . . as national forest lands. . . .'" (327 U.S. at 486.) (Emphasis added.)

In a further comment the Court in the *Wilson* case said: "By this [Weeks] enactment Congress in effect has declined to accept exclusive legislative jurisdiction over forest reserve lands, and expressly provided that the state shall not lose its jurisdiction in this respect ..." (327 U.S. at 486).

The limited scope of the Migratory Act insofar as federal jurisdiction is concerned was succinctly described in *United States v. Carmack*, 329 U.S. 230 (1946) where both the Weeks Acts and the Migratory Act were discussed:

> "When Congress has wished to subordinate its selection of state lands to state approval it has done so by express provision. In the Weeks Forestry Act of March 1, 1911, 36 Stat. 961, 962, 43 Stat. 1215, 45 Stat. 1010, 48 Stat. 955, 16 U.S.C. §516, 16 U.S.C.A. §516, and the Migratory Bird Conservation Act of February 18, 1929, 45 Stat. 1222, 1223, 16 U.S.C. §715f, 16 U.S.C.A. §715f, the consent of the state legislature to the federal acquisition of land is made an express condition of the acceptance of such land. *Such consent does not deprive the state of civil or criminal jurisdiction over the land.* 36 Stat.

963, 16 U.S.C. §480, 16 U.S.C.A. §480, and 45 stat. 1224, 16 U.S.C. §715g, 16 U.S.C.A. §715g. See also, The Upper Mississippi River Wild Life and Fish Refuge Act of June 7, 1924, 43 Stat. 650, 16 U.S.C. §724, 16 U.S.C.A. §724.

"*The acquisition of federal legislative jurisdiction, as distinguished from federal title to the land, is a different matter.* If the Federal Government desires exclusive legislative jurisdiction over land acquired by it, the Constitution indicates that the consent of the state in which the land is located is necessary."[21] (Emphasis added.)

Actually, the State of Louisiana has never consented to the acquisition of these lands as required by the Migratory Act. The United States argues that that consent was obtained through Act 12 of the Louisiana Statutes of 1892 and incorporates that statute (page 33) in the Appendix to its brief. But a mere reading of the title of Act 12 shows that it was dealing solely with "ceding jurisdiction" to the United States rather than conferring consent to the acquisition of state lands. The title of the Act provides:

"To cede jurisdiction to the United States over certain land and for the purchase and condemnation thereof."

As has been noted both from the Department of Justice publication and from *United States v. Carmack*,

[21]*United States v. Carmack*, 329 U.S. 230, n. 10 at 240-241 (1946).

the Migratory Act required the specific consent of the State to the acquisition of *title* rather than a cession of *jurisdiction*. The 1892 Act did not accomplish this. Also, since the deed and judgment failed completely to comply with Section 715e by making the reservations subject to the Secretary's regulations, the United States simply is in no position to assert federal supremacy under the Migratory Act. The lengthy footnote discussion in the Government's brief (fn. 8, page 20) concerning the importance of a careful regulation of the area as a game refuge hardly seems appropriate when the United States failed to insure that protection in its acquisitions.

Respondents submit, contrary to the Government's arguments, that the Migratory Act deliberately avoided any assertion of exclusive federal jurisdiction over the lands acquired under its terms, and that in any event, the failure of the Government to comply with Sections 715e and 715f of the Act effectively prevents it from challenging the application of state law.

IV.

There Are No Valid Constitutional Impediments To The Application of Act 315 of 1940 In This Case.

A. *A Procedural Challenge.*

Respondents challenge the effort of the United States to attack the constitutionality of Act 315 of 1940. As previously noted, that issue has never been raised as

an affirmative claim in the government's pleading, and it cannot now be asserted in the briefs before this Court. *Kewanee Oil & Gas Company v. Mosshamer*, 58 F.2d 711 (10th Cir. 1932); *Gaines W. Harrison & Sons, Inc. v. J. I. Case Company*, 180 F.Supp. 243 (E.D.S.C. 1960); *Alexander v. Daugherty*, 189 F. Supp. 956 (D.C.Wyo. 1960); *Pigott v. Detroit T. & I. R.R.*, 221 F.2d 736 (6th Cir. 1955); *Houck v. Eastchester Public Utility District*, 104 F.Supp. 588 (D.C.Alaska 1952); *Mount Tivy Winery, Inc. v. Lewis*, 42 F.Supp. 636 (N.D.Cal. 1942); *United States v. Nudelman*, 104 F.2d 549 (7th Cir. 1939) and *White Cleaners & Dyers v. Hughes*, 7 F.Supp. 1017 (W.D.La. 1934). In the *Kewanee Oil & Gas Company* case, this was said by the Tenth Circuit Court:

> "From the record it appears that the constitutionality of section 7969 of the Oklahoma Statutes was not raised by the pleadings or by demurrer, but at the time of the trial by an objection to the introduction of evidence.
>
> * * * *
>
> "We therefore conclude that the contention that the state statute is unconstitutional is an affirmative defense, and must be so pleaded." (58 F.2d at 712).

There has been no abrupt change in the law since this action was filed, cf. *Curtis Publishing Company v. Butts*, 351 F.2d 702 (5th Cir. 1965) and therefore the United States is effectively barred from asserting the

constitutional questions since they were not affirmatively raised in the Lower Court.

In its reply brief filed in connection with the writ application, the United States defended its right to raise the constitutional issues by asserting (correctly) that they were considered in both of the courts below. This is unimportant since they were never *pleaded*. The tabulation of relevant docket entries in the single Appendix reflects that answers were filed on behalf of respondents in both of the original suits on July 30, 1969. In each of these answers, the application of Act 315 of 1940 was specially pleaded. The Government's motion for summary judgment was not filed until October 5, 1970. The constitutional issues should have been raised in that pleading. This was not done.

B. *The Right Of The United States Was A Mere Hope Or Expectancy And Not A Vested Property Interest.*

Under the law of Louisiana, there can be no estate in oil, gas or other minerals separate from the ownership of the land. The sale or reservation of mineral rights creates only a servitude (easement under common law) upon the land involved. That servitude is extinguished by the 10-year prescription of non-use unless the right is exercised within that time. The use of the servitude by drilling will interrupt the running of prescription and preserve the rights for an additional 10 years.[22]

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[22] *Frost-Johnson Lumber Co. v. Nabors Oil & Gas Co.*, 149 La. 100, 88 So. 723 (1921); *Louisiana Petroleum Co. v. Broussard*, 172 La. 613, 135 So. 1 (1931); *Lee v. Giauque*, 154 La. 491, 97 So. 669 (1923); La.Civ.Code Arts. 789, 3546 (1870).

One who owns land subject to an outstanding mineral reservation possesses no vested property interest, inasmuch as "estates in reversion" are unknown to Louisiana law. Such an owner of the land possesses only a hope or expectancy to acquire these mineral rights; and perhaps the clearest proof that no vested property interests exists is that this hope or expectancy is not an object that can be legally sold.[23]

The foregoing rather basic discussion relates to the normal statutory servitude created by a mineral sale or reservation. Actually, there are three types of mineral servitudes recognized by the law of Louisiana. They are:

(1) One established by contract for a fixed period, e.g. 8 years. Nothing can extend its life.

(2) A normal statutory servitude where the minerals are reserved without qualification. Such a servitude expires in 10 years unless the 10-year prescription is interrupted by drilling operations or production.

(3) A servitude of indefinite duration established by contract where, as originally established, its extinguishment at the end of 10 years is conditional upon the uncertain

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[23]*Hicks v. Clark*, 225 La. 133, 72 So.2d 322 (1954); *Liberty Farms v. Miller*, 216 La. 1023, 45 So.2d 610 (1950).

> fact of whether drilling operations would be commenced or production would be obtained prior to that date. After the 10-year period, limitations on the further extension of the servitude are usually made, such as a requirement for continuous drilling. This is a classic case of contractual prescription. The servitudes involved in this case fall in this category.

The Louisiana Supreme Court has said in its advisory opinion in *Leiter* that the fixed-term servitude (Item 1) cannot constitutionally be extended by subsequent legislation such as Act 315. However, the Court was equally as positive that the statutory servitude and the servitude involving contractual prescription (Items 2 and 3) are identical in that the purchaser owns only a hope or expectancy of the termination of the servitude by prescription, and that this hope can be validly abrogated by subsequent legislative action. *Leiter Minerals, Inc. v. California Company,* 241 La. 915, 132 So.2d 845 (1961).

Thus, the United States has never owned the mineral rights in this land. They were reserved from the sale and the judgment of condemnation by the Lake Misere group, with the reservations presenting cases of contractual prescription. The limited nature of the United States' hope or expectancy to acquire these mineral rights was succinctly explained in *United States v. Nebo Oil Company*[24] as follows:

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[24]190 F.2d 1003, 1009 (5th Cir. 1951). The Fifth Circuit Court further held that the Louisiana Supreme Court decision in

> "We conclude that this so-called 'reversionary interest' is nothing more than a mere expectancy, or hope, based upon an anticipated continuance without change of the applicable laws of prescription and cannot be regarded as a vested right protected by the Constitution."

The United States appears to accept the *Nebo* ruling. It referred to the language of the Court in that case concerning the Government's "hope" of acquiring title to the mineral rights as being a mere "expectation," which could be modified at the will of the State. However, the United States then falls into serious legal error when it refuses to accept the concept that the same legal principles invoked in *Nebo* are equally applicable to a case of contractual prescription. This error is seen in the following quotation taken from page 25 of the Government's brief:

> "In the present case, the government's right — whether or not characterized as 'contractual prescription' — is derived solely from the express provisions agreed to in the deed of purchase and the condemnation judgment; it depends in no degree upon the law of Louisiana. It is a property right of very substantial value, which was bargained for, reflected in the consideration paid, and specified in private contracts."

Whitney National Bank v. Little Creek Oil Company, 212 La. 949, 33 So.2d 693 (1947), holding that Act 315 must be given retrospective effect when applied to this hope or expectancy, was binding on the Federal courts.

At this juncture, the Government is accepting only one-half of the applicable Louisiana law and is rejecting the remaining half. The segment that it is repudiating is the foursquare ruling of the Louisiana Supreme Court that there is no legal difference between statutory and contractual prescription and that Act 315 of 1940 applies equally to both. The language of the Louisiana Court is worth repeating on this point. It is as follows:

> "The act draws no distinction between statutory and contractual prescription, and, as we view the matter from the history of the act and the objects and purposes for which it was adopted, it is manifest that the Legislature intended the act to be applicable to prescription whether established by statute or by contract where prescription had not already accrued at the time the act became effective."[25]

Also in arguing that its rights are derived solely from the deed and judgment and do not depend upon the law of Louisiana, the Government ignores the fact that it is the law of Louisiana that gives "legal effect" to a contract which the parties have entered into. This is illustrated by the State Supreme Court in *State ex rel. Bulkley v. Whited & Wheless, Ltd.*, 104 La. 125, 28 So. 922 (1900). where the Court said, at p. 133:

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[25]*Leiter Minerals, Inc. v. California Company*, 241 La. 915, 939, 132 So.2d 845, 854 (1961).

> "Parties are at liberty to make contracts so long as they are legal, and to agree upon accidental stipulations; but where they actually make a contract with *fixed legal essentials* they are powerless to control *the legal effect of the contract itself.* The contract being made, *the law governs its results.* Cooley v. Broad, 29 La.Ann. 347." (Emphasis added.)

Cooley v. Broad, cited by the Court in the extract just quoted, anounced the rule as follows:

> "When there exist all the conditions which, by law, create a legal relation, *the effects flowing legally from such relation will follow, whether the parties foresaw and intended them or not.* Thus where a man transfers to another for a sum of money, and absolutely, the ownership of a thing belonging to him, the contract between them is that of sale, and *all the legal consequences of that relation will follow, even though the parties declare it not a sale, but some other contract.*" (29 La.Ann. at 347) (Emphasis added.)

Wier v. Texas Company, 180 F.2d 465 (5th Cir. 1950) is a perfect example of a situation where the court determined the "legal effect" of a contract regardless of its descriptive language; and this decision is particularly appropriate here since it dealt with the reservation of mineral rights from a sale. In the *Wier* case, the vendor purported to reserve from the sale title *in fee,* together with all the minerals, underlying and below a depth of 500 feet from the surface of the property. The Fifth Circuit Court rejected this approach -

and held that only a mineral servitude was created by the reservation. Respondents feel that this decision is a perfect example of the court giving to a mineral reservation the only legal effect that the law of Louisiana authorized. Applied to the present case, the two reservations clearly can be given legal effect under the advisory opinion of the Louisiana Supreme Court in *Leiter* by recognizing that they involve cases of contractual prescription and therefore are subject to the same principles of Louisiana law that deal with statutory prescription.

Once it is recognized that the mineral reservations involved here present cases of contractual prescription and thus were subject to the operation of Act 315 of 1940, the Government's argument concerning impairment of contract becomes completely inapplicable.

The federal law is quite clear that statutes of limitation which exist when a contract is executed, do not form a part of that contract, and may be modified or abrogated with respect to a preexisting contract. *Ogden v. Saunders*, 25 U.S. (12 Wheat.) 213 (1827); *Campbell v. Holt*, 115 U.S. 620 (1885); *Atchafalaya Land Co. v. F. B. Williams Cypress Co.*, 258 U.S. 190 (1922) and *Chase Securities Corp. v. Donaldson*, 325 U.S. 304 (1945). In *Campbell v. Holt*, this Court even extended the rule to upholding state action in extending a statute of limitation after the right of action had been barred under the original statute, thereby restoring to the plaintiff his remedy. In enunciating this rather drastic conclusion, the Court noted, "It violates no right of his, therefore, when the legislature says time

shall be no bar, though such was the law when the contract was made." (115 U.S. at 628). *Chase Securities Corp. v. Donaldson* reaffirmed the *Campbell* case on this point.

The impact of these cases with respect to the application of Act 315 of 1940 was succinctly analyzed in *Nebo*, where the Court said:

> "Nor is there any merit in the contention that Act 315 of 1940 violates the contract clause of the Federal Constitution. The obligation of a contract consists in its binding force on the party who makes it, which, in turn, depends on the laws in existence when it is made. These laws form a part of the contract as the measure of the obligation to perform by the one party and the right acquired by the other. McCracken v. Hayward, 43 U.S. 608, 612, 2 How. 608, 11 L.Ed. 397. However, laws of evidence, or which concern remedies, acts of limitation, and many other subjects may affect the validity, construction, duration, or discharge of contracts, *but changes in these laws are not regarded as necessarily affecting the obligation of contract.* [Citing authorities.]
>
> "It is generally held that laws of limitation or prescription go to matters of remedy. But beyond this workable concept lies the principle that their shelter is not a fundamental right of the individual, it is a right given by the State for purposes of its own and not because of the

merits of the obligation. 'The right does not enter into or become a part of the contract.' Such statutes may be modified by shortening the period prescribed, providing the time is still running and a reasonable time remains for commencement of the action, *or may be lengthened until such time as the bar of the statute is complete and property rights have vested.* Cooley's Constitutional Limitations, page 761, et seq."[26] (Emphasis added.)

When Act 315 of 1940 became effective, the two mineral servitudes, as originally established, were less than 10 years old. On the 1940 date, each was fully effective and in all respects was identical with an ordinary statutory servitude such as the one involved in *Nebo*.[27] Both were subject to the uncertain possibility that they would be extended by drilling or production. Act 315, by making the servitudes imprescriptible, removed the prescription that was then accruing. No property right to the minerals had then vested in the United States, and the only interest of the United States that was affected was the abrogation of its inchoate hope or expectancy that the minerals eventually would revert to it.

The state law is similarly clear that the laws of prescription may be modified so long as no vested rights

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[26] *United States v. Nebo Oil Company*, 190 F.2d 1003, 1009 (5th Cir. 1951).

[27] *United States v. Nebo Oil Co.*, 190 F.2d 1003 (1951).

are divested. *See DeArmas v. DeArmas*, 3 La.Ann. 526 (1848); *Shreveport Long Leaf Lumber Co. v. Wilson*, 195 La. 814, 197 So. 566 (1940); *State v. Alden Mills*, 202 La. 416, 12 So.2d 204 (1943). The Supreme Court of Louisiana in *Whitney National Bank of New Orleans v. Little Creek Oil Company, Inc.*,[28] gave a retrospective effect to the very act involved in the present case (Act 315 of 1940), and applied it to a reservation of minerals in a sale to the United States.

No useful purpose would be served by discussing the several decisions offered by the United States in support of its Property Clause and Contract Clause arguments. All dealt with the impairment of rights that unquestionably were vested property or contract interests. It is clear that in the present case no vested property right existed by virtue of the hope or expectancy of the United States to the minerals created in the two transactions involved here. Act 315 of 1940 could and did validly modify that hope or expectancy so as to make the then-existing mineral rights of the respondents imprescriptible.

C. *The Hostile Discrimination Charge.*

The Government suggests that Act 315 of 1940 singles out the United States and its lessees for hostile discrimination in the acquisition of interest in lands in violation of the Equal Protection Clause of the Fourteenth Amendment. The application for writ properly notes that there are no federal decisions holding the

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[28]212 La. 939, 33 So.2d 693 (1947).

United States to be a "person" entitled to the protection of the Fourteenth Amendment and that this proposition was seriously questioned by this Court in *United States v. Burnison*, 339 U.S. 87, 95 (1950). The Government persists in its contentions, however, that a state cannot discriminate against federal interests.

The hostile discrimination theory has twice been rejected by this Court, and the present contention of the Government represents the third frontal assault upon the law as firmly established. In *United States v. Fox*, 94 U.S. (4 Otto) 315 (1877), this Court upheld a statute of the State of New York which had been construed to prevent the devise by will of the property of a decedent to the United States. The bequest to the Government was therefore nullified. The issue was again raised in *United States v. Burnison*, 339 U.S. 87 (1950), where the Court considered a California statute which prohibited an unrestricted testamentary gift to the United States, although it permitted such gifts to the State and its subsidiaries. The Court recognized that it was being called on to overrule the *Fox* case and firmly refused to do so. It found no arbitrary treatment of the Government and therefore rejected the claim of unconstitutional discrimination.

The fact that the United States is the largest landowner in Louisiana would alone justify singling it out for special statutory treatment. The passage of Act 315 of 1940 reflected in a sense the desire of the state to permit continued purchases by the United States, which purchases would otherwise have been forestalled by parties who were fearful of losing their min-

eral rights. The Louisiana Supreme Court summarized these considerations as follows:

> "Over the years the federal government has acquired huge tracts of land in this state for such purposes as wild life and game refuges, national forests, spillways, military installations, and camps, and it is now the largest landowner in this state.
>
> * * * *
>
> "These various tracts were bought by the government at a relatively low price per acre, evidently because the vendors in most cases reserved the mineral rights, which were, potentially at least, much more valuable than the lands, and the federal government in such sales where the mineral rights were reserved did not expect or intend to acquire the mineral rights. The government, however, had some difficulty in acquiring these lands as their owners did not wish to sell unless they could reserve the oil and gas for a longer period than 10 years without use. In some cases the agents of the United States advised the vendors that the Louisiana law of prescription for non-use did not apply to lands purchased by the United States, and some sales could not have been effected by the government if its representatives had taken the position that the Louisiana law of prescription applied. The government did

not have this particular problem in purchasing lands in other states because no restriction prevented the landowners there from reserving the minerals in perpetuity. Under these circumstances the Louisiana Legislature adopted Act 315 of 1940 to preserve to the vendors the mineral rights in tracts sold to the government and to facilitate the government's acquisition of lands in Louisiana. Thus, one of the primary purposes of Act 315 of 1940 was to keep prescription from running against mineral rights which were reserved when the land was sold to the United States." [*Leiter Minerals, Inc. v. California Company*, 241 La. 915, 932, 132 So.2d 845, 851 (1961)]

The foregoing abundantly demonstrates that Act 315 is merely designed to cure a special problem growing out of Louisiana's unique civil law property system. This problem exists with respect to *all* governmental bodies, not just the United States. By a separate statute, the State of Louisiana has imposed the identical imprescriptibility rule on all acquisitions made by its own agencies. La.R.S.. 9:5806B (Supp. 1972)[29] Also, individual Louisiana citizens as well as governmental entities have been affected by legislation changing the rule of prescription. Prior to 1944, the law of Louisiana was firmly to the effect that the ownership of an interest in a mineral servitude by a minor suspended the

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[29]It is interesting to note that the United States, while persisting in its claim of unilateral hostile discrimination, terms this equal treatment by the State of its own agencies as irrelevant. United States brief, fn. 13 at p. 27.

running of prescription not only as to the minor, but also as to his major co-owners. Act 232 of 1944 changed this law to provide that:

> ". . . despite the fact that among co-proprietors of any mineral ... right there [may] be ... a minor, the liberative prescription shall nevertheless run against the co-proprietors not under legal disability."

The Supreme Court of Louisiana upheld this statute against constitutional attack in *Cooper v. Lykes*, 218 La. 251, 49 So.2d 3 (1950).

D. *The Condemnation Proceedings.*

The brief of the Government (page 22) stresses that a portion of the property was acquired by condemnation proceedings and that in this type of acquisition, the estates and interests created by declarations of taking must be determined by federal law. On this point, it is noteworthy that only a comparatively small portion of the property was acquired by condemnation, with the remainder having been purchased by a conventional deed.[30] Furthermore, this was not a true case of condemnation at all. The judgment was rendered pursuant to a joint stipulation of the United States and the grantors requesting that it be rendered on the form submitted to the Court.[31] For all purposes,

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[30]The stipulation of fact shows that of the 12,625 acres of land involved, only 2,574.18 were acquired in the condemnation proceeding, whereas the remaining 10,048.01 acres were acquired by a conventional act of sale. App. p. 22, et seq.

[31]App., p. 28.

therefore, this was an agreed judgment that had no more effect than a conventional deed.

If Act 315 had purported to dictate the terms of the federal condemnation and thereby attempted to interfere with the Government's right to condemn, there would be force in the Government's argument. This is not the case at all. The Government chose to tailor its condemnation proceedings so as to permit a mineral reservation identical in terms with the ones employed in its conventional purchases. Obviously this was done in fairness to those from whom the property was taken and to insure a uniform type of mineral reservation. The net result, however, is that the Government deliberately chose to permit the mineral reservation and once having done this, the condemned lands were in exactly the same legal position as were those actually purchased. This is particularly true in view of the joint stipulation of the parties discussed above.

The United States relies principally upon the decision of this Court in *United States v. 93.970 Acres of Land*, 360 U.S. 328 (1959) in support of its argument that the mere resort to condemnation proceedings makes federal law applicable and controlling. That case involved nothing more than a question of procedural conflict between Illinois law and federal procedure. The Government, however, relied on the dictum of the Court that where "essential interests" of the Federal Government are concerned, federal law must control unless Congress chooses to make state law applicable. It has previously been demonstrated that the Migra-

tory Act refused to assert any paramount national interest, but rather made applicable the laws of Louisiana to properties purchased pursuant to its terms.[32]

CONCLUSION

The combination of the decisions of the United States Supreme Court and the Louisiana Supreme Court relating to the very Louisiana statute now under consideration overwhelmingly supports the affirmance of the judgment of the Fifth Circuit Court.

Respectfully submitted,

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[32]See discussion at pp. 17-24, *supra*.

ADDENDUM

Act 315 of 1940

Section 1. Be it enacted by the Legislature of Louisiana, That when land is acquired by conventional deed or contract, condemnation or expropriation proceedings by the United States of America, or any of its subdivisions or agencies, from any person, firm or corporation, and by the act of acquisition, verdict or judgment, oil, gas, and/or other minerals or royalties are reserved, or the land so acquired is by the act of acquisition conveyed subject to a prior sale or reservation of oil, gas and/or other minerals or royalties, still in force and effect, said rights so reserved or previously sold shall be imprescriptible.

Section 2. That Act 68 and Act 151 of 1938 and all other laws or parts of laws, general or special, in conflict herewith are hereby repealed.

The Lake Misere Reservation

Reserving unto the grantor, its successors, legal representatives and assigns, and specifically excepting from this acquisition, all the oil, gas, sulphur and other minerals in, on or under said land, together with the right of investigating, exploring, prospecting, drilling and mining for and producing said oil, gas, sulphur and other minerals, laying pipe lines, building tanks, power stations, telephone lines and other structures, thereon to produce, save, take care of, treat, store, transport and manufacture said minerals and housing

the employees necessary for said purposes; which rights shall remain in force for a term of ten (10) years from the date of vesting of title in the United States and as long thereafter as oil, gas, sulphur or other mineral is produced from said land, or so long thereafter as grantor shall conduct drilling or reworking operations thereon with no cessation of more than sixty (60) days consecutively until production results; and, if production results, so long as such mineral is produced.

Provided further that at the end of said ten-year period of reservation, if not extended as hereinabove provided, or at the termination of any extended period in case the operation has not been carried on after said ten-year period as hereinabove provided, the right to mine, produce and market said oil, gas, sulphur or other mineral shall terminate at the end of said ten years, and the complete fee title to said lands shall thereby become vested in the United States.

Provided that forty per cent, (40%) of one-eighth (1/8) royalty of all oil, gas, sulphur and other minerals so removed shall be paid to the United States of America until the total royalties so paid to the United States shall equal the purchase price of $12,870.90.

The Migratory Bird Conservation Act
16 U.S.C. § 715d-715g

§ 715d.

The Secretary of the Interior is authorized to purchase or rent such areas as have been approved for purchase or rental by the commission, at the price or prices fixed by said commission, and to acquire

by gift or devise, for use as inviolate sanctuaries for migratory birds, areas which he shall determine to be suitable for such purposes, and to pay the purchase or rental price and expenses incident to the location, examination, and survey of such areas and the acquisition of title thereto, including options when deemed necessary by the Secretary of the Interior from moneys to be appropriated hereunder by Congress from time to time: *Provided*, That no lands acquired, held, or used by the United States for military purposes shall be subject to any of the provisions of sections 715-715d, 715e, 715f-715k, and 715l-715r of this title.

§ 715e.

The Secretary of the Interior may do all things and make all expenditures necessary to secure the safe title in the United States to the areas which may be acquired under sections 715-715d, 715e, 715f-715k, and 715l-715r of this title, but no payment shall be made for any such areas until the title thereto shall be satisfactory to the Attorney General or his designee, but the acquisition of such areas by the United States shall in no case be defeated because of rights-of-way, easements, and reservations which from their nature will in the opinion of the Secretary of the Interior in no manner interfere with the use of the areas so encumbered for the purposes of said sections, but such rights-of-way, easements, and reservations retained by the grantor or lessor from whom the United States receives title under said sections or any other Act for the acquisition by the Secretary of the Interior of areas for wildlife refuges shall be subject to rules and regulations prescribed by the Secretary of the Interior for

the occupation, use, operation, protection, and administration of such areas as inviolate sancuaries for migratory birds or as refuges for wildlife; and it shall be expressed in the deed or lease that the use, occupation, and operation of such rights-of-way, easements, and reservations shall be subordinate to and subject to such rules and regulations as are set out in such deed or lease or, if deemed necessary by the Secretary of the Interior, to such rules and regulations as may be prescribed by him from time to time.

§ 715f.

No deed or instrument of conveyance shall be accepted by the Secretary of the Interior under sections 715-715d, 715e, 715f-715k, and 715l-715r of this title unless the State in which the area lies shall have consented by law to the acquisition by the United States of lands in that State.

§ 715g.

The jurisdiction of the State, both civil and criminal, over persons upon areas acquired under sections 715-715d, 715e, 715f-715k, and 715l-715r of this title shall not be affected or changed by reason of their acquisition and administration by the United States as migratory-bird reservations, except so as far as the punishment of offenses against the United States is concerned.

Federal Eminent Domain
Sec. 32B

2. *To acquisition of land without cession of jurisdiction.* — Three acts which authorize land acquisition for purposes other than as sites for buildings specifical-

ly require state consent. Under the Weeks Forestry Act the Secretary of Agriculture may accept or approve no deed until the consent of the legislature of the state has been given to the acquisition for the purpose of preserving the navigability of navigable streams. Under the Migratory Bird Conservation Act the Secretary of Agriculture may accept no deed to land acquired unless the consent of the state is given by law. Under the Upper Mississippi River Wild Life & Fish Refuge Act the land may not be acquired until the consent of the legislature of the state to the acquisition in fulfillment of the purpose of the Act is had. The proviso as to purpose in two of the Acts seems to mean that if the land were diverted to some other purpose, the consent would be inoperative. In the Weeks Act and the Migratory Bird Conservation Act it is specifically provided that the states shall not lose their jurisdiction over the land acquired, and jurisdiction is consequently the same as if no state consent had been given, even when the property continues to be used for the purpose for which it was taken. Since it thus appears that the consent required by both of these Acts, unlike that required by Section 355 of the Revised Statutes prior to the 1940 amendment, is not for the purpose of vesting in the United States exclusive jurisdiction over the sites, such consent cannot be regarded as dispensed with by that amendment. Because the Upper Mississippi River Wild Life & Fish Refuge Act is so similar in nature to the Weeks Forestry and Migratory Bird Acts, it is probable that the consent provision embodied therein was likewise not designed to vest exclusive jurisdiction in the United States and therefore is also not dispensed with by the 1940 amendment.

CERTIFICATE OF SERVICE

I, Austin W. Lewis, attorney for Little Lake Misere Land Company, Inc., et al, and a member of the Bar of this Court, hereby certify that copies of the foregoing brief have been served in accordance with Supreme Court Rules, Rule 33, Paragraph 2(a), by depositing three copies of said brief in the United States mail, air mail postage prepaid, addressed to Erwin N. Griswold, Esq., Solicitor General, Department of Justice, Washington, D. C. 20530.

New Orleans, Louisiana, December ____, 1972.

AUSTIN W. LEWIS
Attorney of Record

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In the Supreme Court of the United States

OCTOBER TERM, 1972

No. 71-1459

UNITED STATES OF AMERICA, PETITIONER

v.

LITTLE LAKE MISERE LAND COMPANY, INC., ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

REPLY BRIEF FOR THE UNITED STATES

I. THE UNITED STATES BARGAINED FOR AND ACQUIRED A VALUABLE FEDERAL INTEREST IN AND TO THE MINERALS UNDER THE SURFACE OF THE LAND SUBJECT TO THESE CONVEYANCES

Respondents contend that "the United States has never owned the mineral rights in [the] land" involved here (Br. 28), and therefore is not in a position to complain of an application in this case of the Louisiana statute making servitudes "imprescriptible" (Louisiana Act 315 of 1940). They rely on *United States* v. *Nebo Oil Co.*, 190 F. 2d 1003 (C.A. 5), which characterized the "reversionary interest" that the government retains under a mineral reservation of the sort

involved here as "a mere expectancy, or hope" to obtain an interest in the minerals at some future date (190 F. 2d at 1009).

A. This characterization by the federal court is, we submit, contrary to the decisions of the Louisiana Supreme Court. As explicitly recognized in *Nebo Oil* (190 F. 2d at 1007), "[t]he Louisiana courts have adhered to the principle that a reservation or sale of oil and gas creates only a right to go upon the land to search for and capture minerals." Respondents themselves acknowledge that, under Louisiana law, all they obtained under the reservations in the deed of purchase and the condemnation judgment was "a servitude (easement under common law) upon the land involved" (Br. 26). And see *Leiter Minerals Inc.* v. *California Co.*, 241 La. 915, 931, 132 So. 2d 845, 850. While a mineral servitude is created through such acts as are used in the transfer of title to immovable property (*Long-Bell Petroleum Co.* v. *Tritico,* 216 La. 426, 450–451, 43 So. 2d 782, 791), the Louisiana Supreme Court has explicitly held that the servitude itself "does not transfer or reserve ownership of the minerals * * *" to or in the person thereby given access to the lands. *Hicks* v. *Clark,* 225 La. 133, 138, 72 So. 2d 322, 324. Rather, the owner of the land above is the only one who can have an identifiable interest in whatever minerals are below the surface, an interest which is not lost unless and until the minerals are actually extracted from the land by drilling operations permitted by the servitude. This is not to say that the landowner can claim a separate ownership in undiscovered minerals lying

beneath his property (*Frost-Johnson Lumber Co.* v. *Salling's Heirs,* 150 La. 756, 91 So. 207), but rather that, as pointed out by the Louisiana Supreme Court in *Federal Land Bank* v. *Mulhern,* 180 La. 627, 634, 157 So. 370, 373, "* * * those minerals, while in place in the ground beneath the surface, unsevered, are real estate, a part of the land itself, a part of the realty * * *."

Accordingly, contrary to the Fifth Circuit's decision in *Nebo,* it is not a "property interest" in the minerals that reverts to the landowner upon extinguishment of a servitude for nonuser; as respondents accurately observe (Br. 27), "'estates in reversion' are unknown to Louisiana law." Rather, the owner's reversionary interest under a servitude relates only to the *use* of the land for purposes of exploring for and extracting minerals. *Hicks* v. *Clark, supra.*[1] Whether or not that "reversionary interest" is considered an

[1] While it was held in *Hicks*, as respondents point out (Br. 27), that such a "reversionary interest" cannot be sold by the landowner except in conjunction with a sale of the land itself (see, *e.g.*, *United States* v. *Nebo Oil Co.*, *supra*), the court's reasoning was not related to the landowner's interest in the below-surface minerals. Rather, the court pointed out that a rule permitting such a sale would allow the transfer of the landowner's "reversionary interest" in the use of the land to the same person who enjoyed the servitude. Thus, that person would be in a position to extend his servitude beyond the statutory ten-year period without user by exercising his reversionary right when the servitude became extinguished for non-use. This, the court held (72 So. 2d at 325), would be "contrary to the public policy of [Louisiana] that the right to explore for * * * minerals in the absence of use reverts to the land in a period of 10 years."

"inchoate hope or expectancy," as respondents urge (Br. 34), it clearly does not detract from the purchaser's interest in the minerals below the surface "as part of the realty" under Louisiana law.

Consequently, once the conveyances involved in the present case were consummated, the United States, by virtue of its undisputed ownership of the surface rights in the land in question, had a paramount interest in the minerals below the surface, subject only to the limited servitude stipulated in the reservations. Application of Louisiana Act 315, so as to extend indefinitely respondents' already lapsed servitude to explore for, and extract, those minerals, would significantly undermine a valuable interest that the United States had bargained for and received under the conveyances, and would effectively abrogate the agreed terms of the reservations. For the several reasons we have already discussed in our main brief (pp. 16–28), such a result is constitutionally impermissible.[2]

[2] Respondents' continued reliance on *Nebo Oil* to support their contention that the decision below is consistent with the Contract Clause overlooks a fundamental difference between that case and this one. In *Nebo Oil*, the sale to the United States of the timber lands was subject to an outstanding mineral servitude in favor of a third party. The "reversionary interest" in the landowner—to take effect upon the lapse of the servitude for nonuse—was transferred to the United States. By the terms of the conveyance, the United States, while owning an inseparable estate in the below-surface minerals by virtue of its land acquisition, agreed that *its* right to explore for, and extract, the minerals—vis-a-vis the similar right of the third party under the servitude—would be controlled by the local laws of Louisiana relating to statutory prescription. Here, by contrast, the United

B. Even if the interest of the United States in the minerals involved here might, under state law, be characterized as something less than a vested property right (compare dicta in *Leiter Minerals, Inc.* v. *California Co., supra,* 241 La. at 942, 132 So. 2d at 854), that would not alter our position under the Property Clause. The United States undeniably purchased the tracts of land involved here in 1937 and 1939, and, by the terms of the conveyances, granted to the sellers a mineral servitude for a specified period of time. Whatever the technical characterization of that reservation under state law, it is clear that the United States acquired and retained at least a form of future interest in the minerals below the federal lands.[3] The interest it retained, whether deemed to take effect immediately or at some time in the future, was no less "[p]roperty belonging to the United States" (Art. IV, Sec. 3, cl. 2) than was the soil covering the minerals that had been acquired for game-refuge purposes.

Like the other great grants of legislative power in the Constitution, the Article IV power of Congress "to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging

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States made no such agreement, and thus application of Louisiana Act 315 in the present context contravenes the Contract Clause of the Constitution (and see p. 25, n. 12 in our main brief).

[3] The parties to the conveyances plainly contemplated that, whatever the nature of the grantor's interest in the below-surface minerals under the terms of the reservation, that interest would revert to the United States if, as indeed occurred, 10 years lapsed without the grantor conducting any drilling operations.

to the United States" should be broadly construed. See *M'Culloch* v. *Maryland*, 4 Wheat. 316. That constitutional grant of power would have enabled Congress, if it so chose, to legislate with respect to the regulation or disposition of the valuable mineral interest the United States had acquired here. See *Ashwander* v. *Tennessee Valley Authority*, 297 U.S. 288, 331–333. And if the Constitution grants this power to Congress, it is clear under the Supremacy Clause that the State could not in terms validly prohibit Congress from exercising its constitutionally-granted power. Our submission in this case is that the State cannot accomplish the same result by attempting to usurp and exercise that power—*i.e.*, by purporting to dispose of the very property interest which the Constitution gives Congress the power to dispose of or retain.

II. THE CONTROVERSY IS TO BE RESOLVED BY APPLICABLE PRINCIPLES OF FEDERAL LAW, AND NOT BY THE LAW OF THE STATE OF LOUISIANA

A. This is, we submit, the meaning of the congressional authorization of land acquisitions of the sort involved here under the Migratory Bird Conservation Act, 16 U.S.C. 715 *et seq.* As we explain in detail in our main brief (pp. 19–23), the plan of that Act is to insulate federal interests acquired thereunder from subjection to the peculiarities of local land law.

We do not suggest, as respondents intimate in their brief (pp. 17–23), that because the Secretary of the Interior acted here pursuant to his authority under the Migratory Bird Conservation Act, the lands in

question became part of a federal enclave subject in all respects only to federal jurisdiction. The Act itself provides in relevant part that "[t]he jurisdiction of the State, both civil and criminal, over persons upon areas acquired under sections * * * of this title shall not be affected or changed by reason of their acquisition and administration by the United States as migratory-bird reservations * * *" (16 U.S.C. 715g; Pet. App. 31). And, as respondents point out (Br. 17–23), both the federal government[4] and this Court[5] have consistently recognized that the States retain legislative jurisdiction over such areas "so far as exercise of that jurisdiction is consistent with federal functions" (*Wilson* v. *Cook*, 327 U.S. 474, 486).

But this does not leave the States free to impose restrictions on the manner and extent of land acquisitions the national government can make under the Act, or, as here, to reduce the federal government's interest in property already acquired by altering local land laws. See *Utah Power & Light Co.* v. *United States*, 243 U.S. 389, 404. The scheme of the Migratory Bird Conservation Act contemplates that the administrator of the federal program shall have full power, upon obtaining

[4] See *Federal Eminent Domain*, Sec. 32B, p. 238, reproduced at pp. 4a–5a of respondents merits brief.

[5] See *United States* v. *Carmack*, 329 U.S. 230, 240–241 n. 10.

consent from the State,[6] to acquire the land interests needed while reserving to the former owners thereof whatever access to, or use of, the acquired property that may be deemed expedient and compatible. It was pursuant to that authority, the constitutionality of which is not questioned (see *Missouri* v. *Holland,* 252 U.S. 416), that the United States acted here, and thus "[t]he validity and construction" of its conveyances containing the mineral reservations, and "their consequences on the rights and obligations of the parties, the titles or liens which they create or permit, all present questions of federal law not controlled by the law of any State." *United States* v. *Allegheny County,* 322 U.S. 174, 183.

B. Respondents argue that to apply federal law in this context would constitute a "modification and emasculation of the prior decision of this Court in *Leiter Minerals, Inc.* v. *United States,* 352 U.S. 220 * * *" (Br. 4). Apparently, they take the position that "having called for and received the advisory opinion from the highest court in Louisiana, this Court is bound to apply Act 315 of 1940 to the mineral rights reserved in the transfers to the United States" (Br. 7). But there is nothing in this

[6] Respondents' argument, raised here for the first time in this litigation, that the State "consent" statute (Act No. 12, Louisiana Statutes of 1892) is somehow defective because it is entitled, *inter alia,* an Act "[t]o cede jurisdiction * * *" (Pet. Br. App. 33) is without substance. By its terms, the Act empowers "the United States * * * to purchase or condemn * * * land in the State of Louisiana, not already in use for public purposes * * * for * * * purposes of the government of the United States." Cf. *Swan Lake Hunting Club* v. *United States,* 381 F. 2d 238 (C.A. 5).

Court's *Leiter Minerals* decision that even remotely suggests that its request for an interpretation of the state statute was intended to have such a binding effect. Nor did the Court there give any intimation that it considered state law to be applicable in these circumstances.

Indeed, as we explain in our main brief (pp. 16–23), the weight of authority is the other way. This Court stated in *Ivanhoe Irrigation District* v. *McCracken*, 357 U.S. 275, 289, that "[a]s to the rights and duties of the United States under the contracts, these are matters of federal law * * *," citing *Clearfield Trust Co.* v. *United States*, 318 U.S. 363. This principle was recently reaffirmed in *United States* v. *Seckinger*, 397 U.S. 203, 209, and has consistently been a rule of general application in the lower federal courts. See, *e.g.*, *First National Bank, Henrietta* v. *Small Business Administration*, 429 F. 2d 280, 286 (C.A. 5); *United States* v. *Stadium Apartments, Inc.*, 425 F. 2d 358, 362–363 (C.A. 9).

Respondents rely on *Wallis* v. *Pan American Petroleum Corp.*, 384 U.S. 63, to support their contention that state law controls here. But the *Wallis* case involved wholly different circumstances. The controversy there was between two private parties concerning the assignment of an oil and gas lease. The claims against the lessee were not based on any alleged inconsistency with a federal statute, regulation or order; no challenge was made to the validity of the lease which had been issued by the United States; and

the United States was not a party to the transaction in suit. This Court concluded that state law controlled because, unlike the instant case, there was "no significant threat to any identifiable federal policy or interest * * *" (384 U.S. at 68).

In reaching a similar result in *United States* v. *Yazell*, 382 U.S. 341, on which respondents also rely, the Court again emphasized that no identifiable federal interest "will suffer major damage if the state law is applied" (382 U.S. at 352). Moreover, *Yazell* involved peculiarly unique circumstances, not duplicated here, that were "intensely material to the resolution of the issue presented" (382 U.S. at 346). There, a loan contract with the Small Business Administration had been "individually negotiated * * * with specific reference to [the] Texas law * * *" (382 U.S. at 345-346) of coverture that the SBA later sought to avoid, and there was no existing "federal statute, regulation or even any contract provision indicating that the state law would be disregarded" (382 U.S. at 350–351). The Court held that "in the circumstances, the United States is seeking the unconscionable advantage of recourse to assets for which it did not bargain" (382 U.S. at 346).

Plainly, that is not the case here. At the time these conveyances were negotiated, Louisiana law recognized both contractual and statutory prescription. The parties bargained for and agreed to mineral reservations of specified duration, and the existing federal law, *i.e.*, the Migratory Bird Conservation Act, contemplated that those reservations would be subject only to fed-

eral regulation, without regard to the vagaries of state law. The State should not now be permitted to abrogate the terms of these agreements by means of subsequently enacted legislation purporting to eliminate the prescriptive rights of the United States.[7]

C. Finally, we point out that there is no difficulty in fashioning a federal common law to apply in these circumstances; it will suffice to apply the general principles of land law applicable in most States. Mineral reservations such as agreed to in the present case, which permit the grantor to enjoy a servitude on the land for a stated contractual period, vest in the purchaser a recognized property interest in the minerals below the surface of the acquired lands.[8] That interest, consistent with the provisions of the Migratory Bird Conservation Act, is to be subject only to

[7] In *United States* v. *Burnison*, 339 U.S. 87, this Court, in sustaining an existing state statute prohibiting testamentary gifts to the United States, stated (339 U.S. at 93, n. 14): "* * * our determination does not affect the right of the United States to acquire property by purchase or eminent domain in the face of a prohibitory statute of the state.* * *" Cf. *United States* v. *Oregon*, 366 U.S. 643. Here, of course, the acquisition was not even in the face of a prohibitory statute, since Act 315 was enacted after the fact.

[8] It is, of course, well settled, that "[a]ll reversions are estates in land and all estates present or future are vested in interest." 4A Thompson, *Real Property*, § 1975, p. 379 (1961). Thus, to the extent that the law of the State of Louisiana might be construed as giving to the landowner (here the United States) less than a vested property interest in minerals below lands subject to servitude, it should not be controlling. Cf. *Burnet* v. *Harmel*, 287 U.S. 103, 110; *Nebraska* v. *United States*, 164 F. 2d 866, 867–868 (C.A. 8), certiorari denied, 334 U.S. 815.

federal rules and regulations. Congress plainly did not intend that it be reduced, diluted or defeated by an application of contradictory state laws; nor, we submit, is such a result permitted by the Constitution.

CONCLUSION

For the reasons stated herein and in our main brief, the judgment of the court of appeals should be reversed.

Respectfully submitted.

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NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Lumber Co.*, 200 U.S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

UNITED STATES *v.* LITTLE LAKE MISERE LAND CO. ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 71-1459. Argued January 15-16, 1973—Decided June 18, 1973

Pursuant to the Migratory Bird Conservation Act, the United States acquired land parcels in Louisiana for a wildlife refuge, one by deed in 1937, the other by condemnation in 1939. Mineral rights were reserved to the respondent former owners for a period of 10 years, subject to extension if certain detailed exploration and production conditions were met, after which complete fee title was to vest in the United States. The 10-year period expired without the extension conditions being met. Respondents continued to claim the mineral rights, relying on Louisiana Act 315 of 1940, which, as applied retroactively, provides that mineral rights reserved in land conveyances to the United States shall be "imprescriptible," thus, in effect, extending indefinitely the former owners' mineral reservations. The Government brought this suit to quiet title. The District Court entered summary judgment for the respondents, concluding that *Leiter Minerals, Inc.* v. *United States*, 329 F. 2d 85, was dispositive of the issues, notwithstanding that that judgment had been vacated by this Court and the case remanded with instructions to dismiss the complaint as moot. The Court of Appeals affirmed. *Held:* Under settled principles governing the choice of law by federal courts, Louisiana's Act 315 of 1940 does not apply to the mineral reservations agreed to by the parties in 1937 and 1939. Pp. 8-23.

(a) Here, where the land acquisition to which the United States is a party arises from and bears heavily upon a federal regulatory program, the choice of law task is a federal one for federal courts, as defined by *Clearfield Trust Co.* v. *United States*, 318 U. S. 363. Pp. 9-12.

(b) Absence of a provision dealing with choice of law in the Migratory Bird Conservation Act does not limit the reach of federal law, as interstitial federal lawmaking is a basic responsibility of the federal courts. P. 12.

Syllabus

(c) Even assuming that the established body of state property law should generally govern federal land acquisitions, Act 315, as retroactively applied, may not, because in determining the appropriateness of "borrowing" state law, specific aberrant or hostile state rules do not provide appropriate standards for federal law. Under Act 315 land acquisitions explicitly authorized by federal statute are made subject to a rule of retroactive imprescriptibility, a rule plainly hostile to the United States, and one that deprives the United States of bargained-for contractual interests. Pp. 13–16.

(d) To permit state legislation to abrogate the explicit terms of a prior federal land acquisition would seriously impair federal statutory programs and the certainty and finality that are indispensable to land transactions. Pp. 16–18.

(e) Act 315, as applied retroactively, serves no legitimate and important state interests the fulfillment of which Congress might have contemplated through application of "borrowed" state law. Pp. 18–20.

(f) In 1937 and 1939, the Government could not anticipate that the mineral reservations in issue might be characterized, under present Louisiana law, as indefinite in duration and freely revocable. A late-crystallizing state law doctrine may not modify the clear and explicit contractual expectations of the United States. Pp. 21–22.

(g) As it is clear that Act 315 does not apply here, it is not necessary to choose between "borrowing" some residual state rule of interpretation or formulating an independent federal "common law" rule; neither rule is the law of Louisiana, yet either rule resolves this dispute in the Government's favor. Pp. 22–23.

453 F. 2d 360, reversed and remanded.

BURGER, C. J., delivered the opinion of the Court, in which DOUGLAS, BRENNAN, WHITE, MARSHALL, BLACKMUN, and POWELL, JJ., joined. STEWART and REHNQUIST, JJ., filed opinions concurring in the result.

NOTICE: This opinion is subject to formal revision before publication in the preliminary print of the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D.C. 20543, of any typographical or other formal errors, in order that corrections may be made before the preliminary print goes to press.

SUPREME COURT OF THE UNITED STATES

No. 71–1459

United States, Petitioner,
v.
Little Lake Misere Land Company, Inc., et al.

On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.

[June 18, 1973]

MR. CHIEF JUSTICE BURGER delivered the opinion of the Court.

We granted the writ in this case to consider whether state law may retroactively abrogate the terms of written agreements made by the United States when it acquires land for public purposes explicitly authorized by Congress.

The United States initiated this litigation in 1969 in the United States District Court for the Western District of Louisiana, seeking to quiet title to two adjacent parcels of land in Cameron Parish, Louisiana, which the Government had acquired pursuant to the Migratory Bird Conservation Act as part of the Lacassine Wildlife Refuge.[1] Title to one parcel was acquired by the United States by purchase on July 23, 1937; to the other parcel by a judgment of condemnation entered August 30, 1939. Both the 1937 act of sale and the 1939 judgment of condemnation reserved to the respondent Lake Misere oil, gas, sulphur and other minerals for a period of 10 years from the date of vesting

[1] The United States brought two separate suits for this purpose under 28 U. S. C. § 1345, which were consolidated by consent pursuant to Rule 42 (a), Fed. Rule Civ. Proc.

of title in the United States.[2] The reservation was to continue in effect "as long [after the initial ten-year period] as oil, gas, sulphur or other mineral is produced . . . or so long thereafter as [respondents] shall conduct drilling or reworking operations thereon with no cessation of more than sixty (60) days consecutively until production results; and, if production results, so long as such mineral is produced." The deed and the judgment of condemnation further recited that at the end of 10 years or at the end of any period after 10 years during which the above conditions had not been met, "the right to mine, produce, and market said oil, gas,

[2] In *Frost-Johnson Lumber Co.* v. *Salling's Heirs*, 150 La. 756, 91 So. 207 (1922), the Louisiana Supreme Court declined to recognize a perpetual "mineral estate" in Louisiana lands, transferable independently of the overlying surface property. Instead, the Louisiana Supreme Court declared that "oil and gas in place are not subject to absolute ownership as specific things apart from the soil of which they form part," and that sale or reservation of mineral rights affords no more than a right to go on the land to search for and reduce to possession all minerals found. A. N. Yiannopoulos, Civil Law of Property § 99; Daggett, Louisiana Mineral Rights § 1 (Rev'd ed. 1949). See generally Hardy, The Birth of Louisiana Mineral Law, 16 Loyola L. Rev. 299 (1970). Since *Frost-Johnson*, "[s]ale and reservation of mineral rights have almost consistently been classified as servitudes." Yiannopoulos, *supra*, § 62; Daggett, *supra*, § 2.

"Prescription" or expiration of the remedy to protect a mineral servitude will occur at the end of 10 years from the date of creation, if the servitude is not maintained during that time in accordance with complex requirements for use or acknowledgment. The parties may not extend the 10 year period of prescription by advance agreement, see Art. 3460, Louisiana Civil Code; *Hightower* v. *Maritzsky*, 194 La. 998, 1006–1007, 195 So. 518 (1940). However, the parties are not barred from agreeing to a period of contractual prescription shorter than 10 years. Nabors, The Louisiana Mineral Servitude and Royalty Doctrines: A Report to the Mineral Law Conference of the Louisiana State Law Institute, 25 Tulane L. Rev. 175, 176–177 (1951).

sulphur or other minerals shall terminate . . . and the complete fee title to said lands shall thereby become vested in the United States."

The parties stipulated, and the District Court found, that as to both the parcels in issue here, no drilling, reworking or other operations were conducted and no minerals were obtained for a period of more than 10 years following the act of sale and judgment of condemnation, respectively. Thus, under the terms of these instruments, fee title in the United States ripened as of 1947 and 1949, respectively—10 years from the dates of creation. In 1955, the United States issued oil and gas leases applicable to the lands in question.

Respondents, however, continued to claim the mineral rights and accordingly entered various transactions purporting to dispose of those rights. Respondents relied upon Louisiana Act 315 of 1940, La. Rev. Stat. 9:5806A (Supp. 1972), which provides:

> "When land is acquired by conventional deed or contract, condemnation or expropriation proceedings by the United States of America, or any of its subdivisions or agencies from any person, firm or corportion, and by the act of acquisition, order or judgment, oil, gas or other minerals or royalties are reserved, or the land so acquired is by the act of acquisition conveyed subject to a prior sale or reservation of oil, gas, and/or other minerals or royalties, still in force and effect, the rights so reserved or previously sold shall be imprescriptible."

Respondents contended that the 1940 enactment rendered inoperative the conditions set forth in 1937 and 1939 for the extinguishment of the reservations. The District Court concluded that the Court of Appeals' prior decision in *Leiter Minerals, Inc.* v. *United States*, 329 F. 2d 85 (CA5 1964), required resolution of this case

in favor of respondents, notwithstanding that we had vacated the Court of Appeals' judgment in *Leiter Minerals* and remanded with instructions to dismiss the complaint as moot. 381 U. S. 413 (1965). The Court of Appeals affirmed, for the reasons stated in its *Leiter Minerals* holding. It rejected the Government's Contract Clause and Supremacy Clause objections on the authority of *United States* v. *Nebo Oil Co.*, 190 F. 2d 1003 (CA5 1951), and further rejected the Government's argument that Act 315 was unconstitutionally discriminatory against the United States. The Court of Appeals observed "that the same principle applies to acquisitions by the State of Louisiana, La. Rev. Stat. 9:5806B, and that the act really does nothing more than place citizens of Louisiana in the same position as citizens of other states whose land has been purchased or condemned by the United States." 453 F. 2d, at 360. We reverse.

I

Litigation involving Act 315 began more than a quarter century ago. The *Leiter Minerals* case, upon which the Court of Appeals based its decision in this case, is only the principal holding in the area. The first case to arise involving Act 315, *Whitney National Bank* v. *Little Creek Oil Co.*, grew out of a 1932 sale of mineral rights that specified a 10-year period of prescription. The surface property was conveyed to the United States in 1936, subject to the 1932 mineral sale, and in 1947 the question arose whether Act 315 of 1940 had the effect of extending indefinitely the servitude created by the 1932 sale. The Louisiana Supreme Court held that Act 315 of 1940 was fully applicable to the 1936 transaction—"not because there is anything in the terms of the statute to indicate that it was intended to have a retroactive application, but because of the general rule of law established by the jurisprudence of this court

that laws of prescription and those limiting the time within which actions may be brought are retrospective in their operation." 212 La. 950, 958, 33 So. 2d 693 (1947).[3] The court acknowledged the contention that if Act 315 were applied retroactively, it might be unconstitutional, but dismissed the constitutional issue without resolving it for failure to join the United States, a necessary party.

Whitney Bank set the stage for the first federal court test of Act 315, as construed to have retroactive application, in *United States* v. *Nebo Oil Co.*, 190 F. 2d 1003 (CA5 1951), aff'g 90 F. Supp. 73 (WD La. 1950). There the United States brought suit against Nebo Oil (the successor to the 1932 mineral purchaser of the *Whitney Bank* case) to secure a declaratory judgment that the United States owned the acreage it purchased in 1936 subject only to the 10-year rule of prescription specified at the time of the original 1932 sale of mineral rights. But the Court of Appeals upheld the application of Act 315 to the previously consummated transaction, stressing that reversionary estates are unknown in Louisiana law and that, as a result, the United States in 1936 took "nothing more than a mere expectation, or

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[3] Louisiana law distinguishes between prescription and "peremption." The Louisiana Supreme Court has explained the distinction in the following terms: "When a statute creates a right of action, and stipulates the delay within which that right is to be executed, the delay thus fixed is not, properly speaking, one of *prescription* but is one of *peremption*. Statutes of prescription simply bar the remedy. Statutes of peremption destroy the cause of action itself. That is to say, after the limit of time expires the cause of action no longer exists; it is lost." *Brister* v. *Wray Dickinson Co., Inc.*, 183 La. 562, 565, 164 So. 415, 416, cited in *United States* v. *Nebo Oil Co.*, 90 F. Supp. 73, 80 (ED La. 1950). Because statutes of prescription are considered "remedial" the Louisiana courts have generally held that such statutes are applicable to causes of action which arose before the statute was enacted. *United States* v. *Nebo Oil Co.*, *supra*, at 81–82, and cases cited.

hope, based upon an anticipated continuance of the applicable general laws . . . . [This] mere expectancy . . . cannot be regarded as a vested right protected by the Constitution." 190 F. 2d, at 1008–1009.[4]

In the *Leiter Minerals* litigation, retrospective application of Act 315 to a detailed, conditional mineral reservation was in issue for the first time. Leiter Minerals, Inc., succeeded to the interests of the Leiter faimly, who in 1938 had sold a substantial tract in Plaquemines Parish, Louisiana, to the United States. Leiter's federal sale was subject to a mineral reservation in Leiter's favor, providing in essence that the reservation would be extended for five years beyond its initial 10-year duration whenever commercially advantageous mineral extraction had occurred during 50 days of a defined period.[5] At the expiration of any period during which the conditions for extension had not been met, the right to mine would terminate "and complete fee in the land become vested in the United States." The mineral reservation expired by its own terms; the Government granted a

[4] The Court of Appeals also emphasized that officials of the Department of Agriculture had represented to the Government's vendor that "the prescriptive provisions of the Louisiana Civil Code would not apply to lands sold to the United States for national forest purposes." 190 F. 2d, at 1005. The Court of Appeals noted that the price paid by the Government did not reflect the value of any mineral rights and that the vendor would not have agreed to the land sale absent the Government's representation that Louisiana prescriptive law would not apply. *Id.*, at 1006.

[5] The initial duration of the reservation was 10 years. If mineral operations took place for "an average of at least 50 days per year" during the final three years of the specified term, the servitude would be extended for an additional five-year period, but only with respect to "an area of twenty-five acres of land" around each well or mine producing or being drilled at the "time of first extension." Additional five-year extensions could be obtained "from time to time" to permit completion of active drilling operations.

valuable mineral lease; and Leiter invoked Act 315 to support its claim to a servitude of continuing duration.

After a false start in the Louisiana courts, the ensuing litigation found its way into a federal forum. The United States sued in the Eastern District of Louisiana to quiet title to and to enjoin the concurrent state court proceedings initiated by Leiter. The Court of Appeals affirmed an injunction granted by the District Court,[6] and this Court agreed, but remanded to the Court of Appeals with instructions to secure an authoritative construction of Act 315 before proceeding to the difficult constitutional issues in the case. *Leiter Minerals, Inc.* v. *United States,* 352 U. S. 220, 229.[7]

Adhering to the terms of the remand, Leiter sought a declaratory judgment in the Louisiana courts, which expressed some continuing doubt over the breadth of their responsibility for resolving the *Leiter* controversy on its own facts. Ultimately, the Louisiana Supreme Court took jurisdiction of the case and rendered a declaratory judgment limited to general elucidation of Act 315, without applying the Act to the specific terms of the Leiter mineral reservation itself. *Leiter Minerals, Inc. v. California Co.,* 241 La. 915, 132 So. 2d 845 (1961).

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[6] *Leiter Minerals* v. *United States,* 224 F. 2d 381 (CA5 1955), aff'g 127 F. Supp. 439 (ED La. 1954).

[7] 352 U. S., at 229. The 1957 remand was in effect a remand with instructions to abstain. It contemplated state court elucidation of various uncertainties surrounding Act 315, before this Court would attempt "to decide their relation to the issues in the case." We do not therefore, understand the respondent's suggestion, echoed by MR. JUSTICE STEWART, that the 1957 remand foreshadowed final resolution of the *Leiter Minerals* controversy through state law. Indeed, the Court's opinion stated that "[I]t need hardly be added that the state courts . . . can decide definitely only questions of state law that are not subject to overriding federal law." 352 U. S., at 229–230.

The Louisiana Supreme Court expressed its conclusions as follows:

> "First, that if the reservation in the Leiter deed is construed as establishing a mineral servitude for a definite, fixed, and specified time which has elapsed, then Act 315 of 1940 is not applicable and cannot be constitutionally applied; and second, that if the reservation is construed as not establishing a servitude for a fixed, definite and certain time, and if it is decided that the provisions of the reservation show that the parties were stipulating for a period of contractual prescription for the conditional extinguishment of the mineral servitude created, then Act 315 of 1940 is applicable and constitutional."

Recognizing that "the interpretation of this reservation is for the United States courts and not for us in this proceeding," 241 La. 915, 132 So. 2d, at 850, that court nevertheless hinted broadly that it viewed the Leiter reservation as one establishing a reservation for an indefinite period of time, and thus one subject to retroactive application of Act 315. See 241 La., at 936, 938.

The parties then returned to federal court. The District Court held that the mineral reservation in the Leiter deed created a mineral servitude for a fixed period and that, under the terms of the Louisiana Supreme Court's declaratory ruling, as a matter of state law the reservation was not affected by Act 315. 204 F. Supp. 560 (ED La. 1962). The Court of Appeals reversed. It rejected the Government's contention that federal law controlled the rights of the United States under the reservation, and held, instead, that those rights were to be governed by Louisiana law. The Court of Appeals believed that the Louisiana Supreme Court had viewed Leiter's servitude as "one of indefinite duration" and it agreed with that view. Under Louisiana law, there-

fore, the reservation "provided for a contractual prescription for the conditional extinguishment of the mineral servitude which was rendered inoperative by [Act 315]." As to the Government's contention that the Act, as so construed, unconstitutionally impaired the obligation of contract, the Court of Appeals concluded that the discussion of that matter in its prior decision in *Nebo Oil, supra*, and in the Louisiana Supreme Court's *Leiter* opinion, made it "unnecessary further to labor" the point. Judge Gewin dissented. On being advised by the parties that the case had been settled, we granted certiorari, vacated the judgment of the Court of Appeals, and remanded the cause to the District Court with instructions to dismiss the complaint as moot. 381 U. S. 413 (1965).

II

The essential premise of the Court of Appeals' decision in the *Leiter Minerals* case was that state law governs the interpretation of a federal land acquisition authorized by the Migratory Bird Conservation Act. The Court of Appeals did not set forth in detail the basis for this premise,[8] but that court's opinion seems to say

[8] In *Leiter Minerals*, the Court of Appeals stated that, although "Congress could make federal law applicable, . . . it had no intention to do so when it merely authorized the contract by which the United States acquired the [Leiter] property." The Court of Appeals expressed the view that "state law must govern in the absence of a federal statute," and in support of its view it cited *Swift* v. *Tyson*, 16 Pet. 1, 18 (1842). Later in its opinion, the Court of Appeals stated that "since the United States had the right to invoke federal jurisdiction (28 U. S. C. § 1345), the ultimate responsibility for the interpretation of the reservation rests upon the federal courts. That interpretation, however, must be in accordance with State law . . . ." 329 F. 2d, at 90, 91. From these statements, it appears that the Court of Appeals considered that the interpretation of the *Leiter* agreement was governed by state law (applied of its own force), with the role of the federal courts con-

that state law governs this land acquisition because, at bottom, it is an "ordinary" "local" land transaction to which the United States happens to be a party. The suggestion is that this Court's decision in *Erie R. Co.* v. *Tompkins*, 304 U. S. 64 (1938), compels application of state law here because the Rules of Decision Act, 28 U. S. C. § 1652,[9] requires application of state law in the absence of an explicit congressional command to the contrary. We disagree.

The federal jurisdictional grant over suits brought by the United States is not in itself a mandate for applying federal law in all circumstances. This principle follows from *Erie* itself, where, although the federal courts had jurisdiction over diversity cases, we held that the federal courts did not possess the power to develop a concomitant body of general federal law. Mishkin, The "Variousness" of "Federal Law": Competence and Discretion in the Choice of National and State Rules for Decision, 105 U. Pa. L. Rev. 797, 799 (1957). It is true, too, that "[t]he great body of law in this country which controls acquisition, transmission, and transfer of property, and defines the rights of its owners in relation to the state or to private parties, is found in the statutes and decisions of the state." *Davies Warehouse Co.* v. *Bowles*, 321 U. S. 144, 155 (1944). Even when federal general law was in its heyday, an exception was carved out for local laws of

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fined to interpretation of state law "in accordance with state law" as laid down by the highest courts of the State. Possibly, though, the Court of Appeals thought that the choice of applicable law was itself a question of federal law ("ultimate responsibility . . . rests upon the federal courts . . .") but that in the general context of this case, involving real property, state law should be applied through "borrowing."

[9] "The laws of the several states, except where the Constitution or treaties of the United States or Acts of Congress otherwise require or provide, shall be regarded as rules of decision in civil actions in the courts of the United States, in cases where they apply."

real property. *Swift* v. *Tyson*, 16 Pet. 1, 18 (1842); see *Kuhn* v. *Fairmont Coal Co.*, 215 U. S. 349, 360 (1910). Indeed, before *Erie R. Co.* v. *Tompkins*, *supra*, this Court's opinions left open the possibility that even "the United States, while protected by the Constitution from discriminatory state action and perhaps certain other forms of state control, was nevertheless governed generally in its ordinary proprietary relations by state law." Hart, The Relations Between State and Federal Law, 54 Col. L. Rev. 489, 533. See, *e. g.*, *Mason* v. *United States*, 260 U. S. 545, 558 (1923).

Despite this arguable basis for its reasoning the Court of Appeals in the instant case seems not to have recognized that this land acquisition, like that in *Leiter Minerals*, is one arising from and bearing heavily upon a federal regulatory program. Here, the choice of law task is a federal task for federal courts, as defined by *Clearfield Trust Co.* v. *United States*, 318 U. S. 363 (1943). Since *Erie*, and as a corollary of that decision, we have consistently acted on the assumption that dealings which may be "ordinary" or "local" as between private citizens raise serious questions of national sovereignty when they arise in the context of a specific constitutional or statutory provision; particularly is this so when transactions undertaken by the Federal Government are involved, as in this case.[10] In such cases, the Constitution or Acts of

[10] This is not a case where the United States seeks to oust state substantive law on the basis of "an amorphous doctrine of national sovereignty" divorced from any specific constitutional or statutory provision and premised solely on the argument "that every authorised activity of the United States represents an exercise of its governmental power," see *United States* v. *Burnison*, 339 U. S. 87, 92 (1950); *United States* v. *Fox*, 94 U. S. (4 Otto) 315 (1877). *Burnison* and *Fox* stand at the opposite end of the spectrum from cases where Congress explicitly displaces state law in the course of exercising clear constitutional regulatory power over a particular subject matter. See, *e. g.*, *Sunderland* v. *United States*, 266 U. S.

Congress "require" otherwise than that state law govern of its own force.

There will often be no specific federal legislation governing a particular transaction to which the United States is a party; here, for example, no provision of the Migratory Bird Conservation Act guides us to choose state or federal law in interpreting federal land acquisition agreements under the Act. But silence on that score in federal legislation is no reason for limiting the reach of federal law, as the Court of Appeals thought in *Leiter Minerals*. To the contrary, the inevitable incompleteness presented by all legislation means that interstitial federal lawmaking is a basic responsibility of the federal courts. "At the very least, effective Constitutionalism requires recognition of the power in the federal courts to declare, as a matter of common law or 'judicial legislation,' rules which may be necessary to fill in interstitially or otherwise effectuate the statutory patterns enacted in the large by Congress. In other words, it must mean recognition of federal judicial competence to declare the governing law in an area comprising issues substantially related to an established program of government operation." Mishkin, *supra*, at 800.

This, then, is what has aptly been described as the "first" of the two holdings of *Clearfield Trust Co.* v. *United States*, 318 U. S. 363 (1943)—that the right of

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226, 232–233 (1924) (United States may displace Oklahoma law by imposing restrictions on alienation of Indian property despite the "general rule . . . that the tenure, transfer, control and disposition of real property are matters which rest exclusively within the State where the property lies."). The present case falls between the poles of *Burnison* and *Sunderland*. Here we deal with an unquestionably appropriate and specific exercise of congressional regulatory power which fails to specify whether or to what extent it contemplates displacement of state law.

the United States to seek legal redress for duly authorized proprietary transactions "is a federal right, so that the courts of the United States may formulate a rule of decision." Friendly, In Praise of *Erie* and the New Federal Common Law, 39 N. Y. U. L. Rev. 383, 410. At least this first step of the *Clearfield* analysis is applicable here. We deal with the interpretation of a land acquisition agreement (a) explicitly authorized, though not precisely governed, by the Migratory Bird Conversation Act and (b) to which the United States itself is a party. Cf. *Bank of America National Trust & Savings Assn.* v. *Parnell*, 352 U. S. 29, 33. As in *Clearfield* and its progeny, "the duties imposed upon the United States and the rights acquired by it . . . find their roots in the same federal sources . . . . In the absence of an applicable Act of Congress it is for the federal courts to fashion the governing rule of law according to their own standards." 318 U. S., at 366–367; *United States* v. *Allegheny County*, 322 U. S. 174, 183 (1944); *United States* v. *Standard Oil Co.*, 332 U. S. 301, 305 (1947); *Board of County Comm'rs* v. *United States*, 308 U. S. 343, 349–350 (1939).[11]

III

The next step in our analysis is to determine whether the 1937 and 1939 land acquisition agreements in issue should be interpreted according to "borrowed" state law—Act 315 of 1940. The availability of this choice was explicitly recognized in *Clearfield Trust* itself [12] and fully

[11] *United States* v. *Certain Property*, 306 F. 2d 439 (CA2 1962), the principal decision relied on by the Court of Appeals in *Leiter Minerals, supra*, does not suggest application of state law, of its own force, to federal land acquisitions. See the discussion by the author of *Certain Property* in Friendly, *supra*, at 411 n. 133.

[12] "In our choice of the applicable federal rule we have occasionally selected state law." 318 U. S., at 367.

elaborated some years later in *United States* v. *Standard Oil Co., supra.* There we acknowledged that "in many situations and apart from any supposed influence of the *Erie* decision, rights, interests and legal relations of the United States are determined by application of state law, where Congress has not acted specifically." 332 U. S., at 308. We went on to observe that whether state law is to be applied is a question "of federal policy, affecting not merely the federal judicial establishment and the groundings of its actions, but also the Government's legal interests and relations, a factor not controlling in the types of cases producing and governed by the *Erie* ruling. And the answer to be given necessarily is dependent upon a variety of considerations always relevant to the nature of the specific governmental interests and to the effects upon them of applying state law." *Id.*, at 309–310. See also *DeSylva* v. *Ballentine,* 351 U. S. 570, 580 (1956); *Reconstruction Finance Corp.* v. *Beaver County,* 328 U. S. 204; *Board of County Comm'rs* v. *United States,* 308 U. S. 343, 351–352; *Royal Indemnity Co.* v. *United States,* 313 U. S. 289, 296; *United States* v. *Yazell,* 382 U. S. 341, 356–357; cf. *United States* v. *Mitchell,* 403 U. S. 190.

The Government urges us to decide, virtually without qualification, that land acquisition agreements of the United States should be governed by federally created federal law. Cf. *United States* v. *93.970 Acres,* 360 U. S. 328 (1959). We find it unnecessary to resolve this case on such broad terms. For even if it be assumed that the established body of state property law should generally govern federal land acquisitions, we are persuaded that the particular rule of law before us today—Louisiana's Act 315 of 1940, as retroactively applied—may not. The "reasons which may make state law at times the appropriate federal rule are singularly inap-

propriate here." *Clearfield Trust, supra,* 318 U. S., at 367.[13]

The Court in the past has been careful to state that, even assuming in general terms the appropriateness of "borrowing" state law, specific aberrant or hostile state rules do not provide appropriate standards for federal law. In *DeSylva* v. *Ballentine,* 351 U. S. 570 (1956), we held that whether an illegitimate child was a "child" of the author entitled under the Copyright Act to renew the author's copyright was to be determined by whether, under state law, the child would be an heir of the author. But Mr. Justice Harlan's opinion for the Court took pains to caution that the Court's holding "does not mean that a state would be entitled to use the word 'children' in a way entirely strange to those familiar with its ordinary usage . . . ." *Id.,* at 581. In *Reconstruction Finance Corporation* v. *Beaver County,* 328 U. S. 204 (1946), the issue was whether the definition of "real property," owned by the RFC and authorized by Congress to be subject to state and local taxation, was to be derived from state law or to be fashioned as an independent body of federal law. The Court concluded that "[t]he congressional purpose can best be accomplished by application of settled state rules as to what constitutes 'real property' "—but again the Court foresaw that its approach would be acceptable only "so long as it is plain, as it is here, that the state rules do not effect a discrimination against the Government or patently run counter to the terms of the Act." 328 U. S., at 210. See also *U. A. W.* v. *Hoosier Cardinal Corp.,* 383 U. S. 696, 706 (1966).

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[13] In view of our disposition, we decline to resolve the continuing uncertainty, under Louisiana law, over the applicability of Act 315 to the mineral reservation in issue here. See pp. 20–21, *infra.*

Under Louisiana's Act 315 land acquisitions of the United States,[14] explicitly authorized by the Migratory Bird Conservation Act, are made subject to a rule of retroactive imprescriptibility, a rule that is plainly hostile to the interests of the United States. As applied to a consummated land transaction under a contract which specifically defined conditions for prolonging the vendor's mineral reservation, retroactive application of Act 315 to the United States deprives it of bargained-for contractual interests.

To permit state abrogation of the explicit terms of a federal land acquisition would deal a serious blow to the congressional scheme contemplated by the Migratory Bird Conservation Act and indeed all other federal land acquisition programs. These programs are national in scope. They anticipate acute and active bargaining by officials of the United States charged with making the best possible use of limited federal conservation appropriations. Certainty and finality are indispensable in

[14] In 1938, the Louisiana Legislature passed Act 68 and, later, Act 151. Both statutes barred prescription of mineral reservations in certain lands conveyed to the United States. Act 68 applied to land acquired by the United States or by the State of Louisiana "for use in the construction, operation or maintenance of any spillway or floodway" authorized by federal law. Act 151, broad enough in terms to supersede Act 68, provided that prescription would not run against mineral or royalty reservations or real estate "acquired by the United States or by the State of Louisiana, or any of its subdivisions . . . for use in any public work and/or improvement." See generally Comment, Imprescriptible Mineral Reservations in Sales of Land to the State and Federal Governments, 22 Tulane L. Rev. 496 (1948).

Whether because the "floodway" and "public work" qualifications of the 1938 Acts make them inapplicable to the 1939 condemnation reservation in issue here, or because the parties' own agreement in 1939 reflects their belief that Act 151 was inapplicable, respondents do not argue that the 1938 legislation is material to the outcome of this case.

any land transaction, but they are especially critical when, as here, the federal officials carrying out the mandate of Congress irrevocably commit scarce funds.

The legislative history of the Migratory Bird Conservation Act confirms the importance of contractual certainty to the federal land acquisition program it authorizes. As originally enacted in 1928, the Act provided that land acquisitions might include reservations, easements and rights of way but that these were to be subject to "such rules and regulations" as the Secretary of the Interior might prescribe "from time to time." This sweeping statement of the Secretary's power to modify contract terms in favor of the Government had an unsettling effect on potential vendors; in 1935, the Act was amended to require the Secretary either to include his rules or regulations in the contract itself or to state in the contract that the reservation or easement would be subject to rules and regulations promulgated "from time to time." [15] A

[15] See 74th Cong., 1st Sess., Report of the Special Committee on Conservation of Wildlife Resources on S. 3006, at 2–3 (1935):

"The Migratory Bird Conservation Act of 1929 established the Federal policy for the acquision of areas for migratory waterfowl refuges. Under the provisions of that Act, the Secretary of Agriculture was authorized when purchasing property for waterfowl refuges, to make certain reservations to be retained by the vendors of the property, but these reservations were subjected to regulations of the Secretary of Agriculture which might be made 'from time to time.' The administration of this Act has developed some harassments in the acquisition of desirable waterfowl areas because some owners are not willing to convey their lands to the Federal Government on the indefinite and uncertain terms as provided in regulations made 'from time to time.'

"Obviously they may well be justified in their view, and, just as obviously, the Government may reasonably be secured in its interests by providing for enjoyment on the reservations under regulations to be stated in the conveyance at the time of its execution, leaving the vendor who has made the reservation to the general requirement of existing law that he will be subject to the rules and

Congress solicitous of the interests of private vendors in the certainty of contract would hardly condone state modification of the contractual terms specified by the United States itself as vendee, regardless whether those terms may be characterized as "rules and regulations" within the meaning of the Act.

Conceivably, our conclusion might be influenced if Louisiana's Act 315 of 1940, as applied retroactively, served legitimate and important state interests the fulfilment of which Congress might have contemplated through application of state law. But that is not the case. We do not deprecate Louisiana's concern with facilitating federal land acquisitions by removing uncertainty on the part of reluctant vendors over the duration of mineral reservations retained by them. From all appearances, this concern was a significant force behind the enactment of the 1940 legislation.[16] But today we are not asked to consider Act 315 on its face, or as applied to transactions consummated after 1940; we are concerned with the application of Act 315 to a pair of acquisition agreements in 1937 and 1939. And however legitimate the State's interest in facilitating federal land acquisitions, that interest has no application to transactions already completed at the time of the enactment of Act 315: the legislature cannot "facilitate" transactions already consummated.[17]

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regulations of the Secretary of Agriculture governing the general administration of the area as a migratory bird refuge.

"Accordingly it is proposed to amend Section 6 of the Act of 1929 so that these reservations, in the discretion of the Secretary of Agriculture, may be subjected to regulations to be stated in the instrument of conveyance."

[16] See the discussion in *Leiter Minerals, Inc.* v. *California Co.*, 241 La. 915, 932, 132 So. 2d 845, 848 (1961).

[17] Because we are concerned here with retroactive application of Act 315, there is likewise no basis for the Court of Appeal's suggestion that Act 315 simply places Louisiana citizens on the same

The Louisiana Supreme Court has candidly acknowledged two additional purposes which help to explain retroactive application of Act 315: to clarify the taxability by the State of mineral interests in the large federal land holdings in Louisiana, otherwise in doubt by virtue of the arcane and fluctuating doctrines of intergovernmental tax immunity; and to ensure that federal mineral interests could be subjected to state mineral conservation laws without federal pre-emption.[18] We are not unsympathetic to Louisiana's concern for the consequences of a continuing, substantial even if contingent, federal interest in Louisiana minerals. Congress, however, could scarcely have viewed that concern as a proper justification for retroactive application of state legislation which effectively deprives the Government of its

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footing as other States' citizens whose land is purchased or condemned by the United States.

[18] "There can be no doubt . . . that there were other objects and purposes for the enactment of Act 315 of 1940 . . . .

"One of the important sources of revenue of the State of Louisiana is the severance tax which is levied and collected by the State when natural resources such as oil and gas are produced and extracted from the land. If the mineral rights were owned by the federal government in lands which the government had purchased, the mineral onwer's share of the oil and gas produced from these lands would not be subject to taxation by the State of Louisiana, and the State would be deprived of large sums in taxes, especially since an immense area is owned by the federal government in oil-producing sections of this State, as the very facts of this case disclose.

"Moreover, the State of Louisiana in the exercise of its police power has authority to protect, conserve, and replenish the natural resources of the State and to prohibit and prevent their waste . . . . Under this power the Legislature has adopted laws regulating and controlling the production of oil and gas within the State. By making mineral rights imprescriptible in lands sold to the government and retaining these rights in the vendors, Act 315 of 1940 avoided a possible conflict by the State in the exercise of its police power with the federal government."

bargained-for contractual interests. Our Federal Union is a complicated organism, but its legal processes cannot legitimately be simplified through the inviting expedient of special legislation which has the effect of confiscating interests of the United States.[19]

Respondents point out that "[o]ne who owns land subject to an outstanding mineral reservation possesses no vested property interest [under Louisiana law], inasmuch as 'estates in reversion' are unknown to Louisiana law. Such an owner of the land possesses only a hope or expectancy to acquire these mineral rights; and . . . this hope or expectancy is not an object that can be legally sold." Respondents' Brief, at 27, citing, *e. g.*, *Hicks v. Clark*, 225 La. 133, 72 So. 2d 322 (1954). But

[19] In 1957, 18 years after the passage of Act 315, Louisiana enacted legislation that subjects the State and certain of its subdivisions to the rule of imprescriptibility. Louisiana Act 279 of 1958, La. Rev. Stat. 9:5806 B (Supp. 1972). But this belated effort at statutory parity does not eliminate the adverse effect upon the United States, and upon the Migratory Bird Conservation Act, of retroactive application of Act 315 of 1940. For one thing, it is not clear whether the 1958 legislaiton will be given full retrospective effect by the Louisiana courts, reaching back to 1937 and earlier. More basic, even assuming retrospective application of the 1958 statute, the effect of the 1958 statute on Louisiana is not comparable to the effect of the 1940 Act on the United States. With or without legislation relating to prescription of mineral interests tied to governmental land acquisitions, Louisiana could plainly apply its own conservation laws and its own severance tax to any property in which the State held a contingent or even a present mineral interest. The 1958 legislation did nothing to reduce Louisiana's freedom in this respect. Act 315 of 1940, however, as applied retroactively, had the avowed purpose and would have the clear effect of permitting taxation and conservation regulation of minerals which, quite possibly, would otherwise fall within the Federal Government's exclusive domain. However parallel the two statutes in purpose and in their potential effect on actual mineral right ownership by the respective sovereigns, it is only Act 315 of 1940 that significantly affects interests of the United States in intergovernmental immunity.

whether Louisiana recognizes the interests at stake here as transferable interests in real property, as such, has no bearing on our conclusion that after-the-fact modification of explicit contractual terms would be adverse to the United States and contrary to the requirements of the Migratory Bird Conservation Act.

It is also of no import that, under Louisiana law as it might be articulated in 1973, the United States acquired from respondent only the reversion to a mineral interest of indefinite duration, a "hope" or "expectancy" revocable at any time by after-enacted legislation. Respondent places heavy reliance on the opinion of the Louisiana Supreme Court in *Leiter Minerals*, where that court held that a mineral reservation for an indefinite duration was one traditionally subject to retroactive prescriptive change. But even if this rule of law could have been anticipated in 1937 and 1939, when the United States agreed to the mineral reservations in issue here, that the 1937 and 1939 reservations were of "indefinite" duration could not have been. Indeed, some 20 years later, in 1957, when *Leiter Minerals* came to this Court for the first time, we were not in a position to resolve the Government's contention that the *Leiter* reservation was one of specific duration. Uncertainty over this question of Louisiana law was the guiding force behind our remand in hopes of obtaining the view of the Louisiana Supreme Court. In its advisory opinion, the Louisiana Supreme Court did not definitely decide whether the *Leiter*-type reservation was "indefinite" and subject to retroactive modification—to the extent that the Federal District Court, in Louisiana, subsequently concluded that the servitude in the *Leiter* reservation was not, under state law, freely revocable. In *Leiter Minerals*, one Court of Appeals judge dissented on this state law issue, and, with reason, the Government renews the issue before the Court in this case.

Were the terms of the mineral reservations at issue here less detailed and specific, it might be said that the Government acknowledged and intended to be bound by unforseeable changes in state law. But the mineral reservations before us are flatly inconsistent with the respondent's suggestion that the United States in fact expected that these reservations would be wholly subject to retroactive modification. Nor, given the absence of any reliable contemporaneous Louisiana signpost and the absence even today of any final resolution of the pertinent state law question can we say that the United States ought to have anticipated that its deed contained an empty promise. Respondent's reliance on the Louisiana Supreme Court's holding in its opinion in 1961 in *Leiter Minerals* assumes that a late-crystallizing doctrine of state law is appropriately applied to modify the expectations of the United States established by the terms of 1937 and 1939 bargains. The argument, however, is indistinguishable from respondent's defense of Act 315 itself. Years after the fact, state law may not redefine federal contract terminology "in a way entirely strange to those familiar with its ordinary usage. . . ." *DeSylva* v. *Ballentine, supra,* 351 U. S., at 581.

IV

In speaking of the choice of law to be applied, the alternatives are plain although in this case identifying them in fixed categories is somewhat elusive. One "choice" would be to apply the law urged on us by respondents, *i. e.,* Louisiana Act 315 of 1940. In some circumstances, such as those suggested by *Reconstruction Finance Corp.* v. *Beaver County, supra,* or *Wallis* v. *Pan American Petroleum Corp.,* 384 U. S. 63 (1966),[20] state

[20] *Wallis* is readily distinguishable from the instant case; there the assignability of an oil and gas lease was in controversy between two private parties. That presented "no significant threat to any identifiable federal policy or interest." 384 U. S., at 68.

law may be found an acceptable choice, possibly even when the United States itself is a contracting party. However, in a setting in which the rights of the United States are at issue in a contract to which it is a party and "the issue's outcome bears some relationship to a federal program, no rule may be applied which would not be wholly consistent with that program." Mishkin, *supra*, at 805–806.

Since Act 315 is plainly not in accord with the federal program implemented by the 1937 and 1939 land acquisitions, state law is not a permissible choice here. The choice of law merges with the constitutional demands of controlling federal legislation; we turn away from state law by default. Once it is clear that Act 315 has no application here, we need not choose between "borrowing" some residual state rule of interpretation or formulating an independent federal "common law" rule; neither rule is the law of Louisiana yet either rule resolves this dispute in the Government's favor. The contract itself is unequivocal; the District Court concluded, and it is not disputed here, that by the clear and explicit terms of the contract reservations, "[respondents'] interests in the oil, gas, sulphur and other minerals terminated . . . no later than July 23, 1947, and August 30, 1949, unless Act 315 of 1940 has caused the reservations of the servitudes in favor of [respondents] to be imprescriptible."

We hold that, under settled principles governing the choice of law by federal courts, Louisiana's Act 315 of 1940 has no application to the mineral reservations agreed to by the United States and respondents in 1937 and 1939, and that, as a result, any contract interests of respondents expired on the dates identified by the District Court. Accordingly, we reverse the judgment of the Court of Appeals and remand the case for entry of an order consistent with this opinion.

Reversed and remanded.

SUPREME COURT OF THE UNITED STATES

No. 71–1459

United States, Petitioner,
v.
Little Lake Misere Land Company, Inc., et al.

On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.

[June 18, 1973]

MR. JUSTICE STEWART, concurring in the result.

I cannot agree with the Court that the mineral reservations agreed to by the United States and the respondents in 1937 and 1939 are governed by some brooding omnipresence labeled federal common law. It seems clear to me, as a matter of law, not a matter of "choice" or "borrowing," that when anyone, including the Federal Government, goes into a State and acquires real property, the nature and extent of the rights created are to be determined, in the absence of a specifically applicable federal statute, by the law of the State.

That was the very premise of the decision in *Leiter Minerals, Inc.* v. *United States*, 352 U. S. 220, 228–230 (1957), which remanded the case to the Court of Appeals with instructions to secure an authoritative construction of the *state* statute by the *state* courts, in order possibly to avoid deciding the federal constitutional issues. Other decisions of this Court lead to the same conclusion. *United States* v. *Yazell*, 382 U. S. 341, 352–358 (1966); *United States* v. *Burnison*, 339 U. S. 87, 89 (1950); *Davies Warehouse Co.* v. *Bowles*, 321 U. S. 144, 155 (1944); *Sunderland* v. *United States*, 266 U. S. 226, 232–233 (1924); *Mason* v. *United States*, 260 U. S. 545, 557–558 (1923); *United States* v. *Fox*, 94 U. S. (4 Otto) 315, 320 (1887). Cf. *Wallis* v. *Pan American Petroleum Corp.*, 384 U. S. 63 (1966).

Since I think the Government's property acquisitions

here are controlled by state law, the decisive question for me is whether the retroactive application of Louisiana Act 315 of 1940 to those acquisitions is constitutional.[1] The 1937 deed of purchase and the 1939 condemnation judgment were unequivocal: the mineral rights were reserved to the former owners of the land for a 10-year period, after which time—if certain conditions regarding exploration and production were not met—the reserved rights were to terminate, and complete fee title to the land, including the mineral rights, was to become vested in the United States. The Federal Government bargained for this contingent future interest in the minerals; it was clearly agreed to in the conveyances, and was thus reflected in the consideration paid by the Government to the former owners.

Yet the Court of Appeals held that Louisiana Act 315, which was enacted subsequent to those conveyances, operated to abrogate the agreed-upon terms of the mineral reservations by eliminating the Government's future interest. This retroactive application of Act 315, I believe, is a textbook example of a violation of Art. I, § 10, cl. 1, of the Constitution, which provides that no State shall pass any law "imparing the Obligation of Contracts."[2]

Accordingly, I concur in the judgment of the Court.

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[1] Thus, I do not suggest, as the Court seems to think I do (*ante*, at 7, n. 6), that this controversy can necessarily be *finally* resolved through state law. Rather, my analysis is wholly consistent with the statement in *Leiter Minerals, Inc.* v. *United States*, 352 U. S. 220, 229–230 (1957), quoted by the Court today (*ante*, at 7, n. 6), that state courts "can decide definitely only questions of state law that are not subject to overriding federal law."

[2] This case is a far cry from *Home Building & Loan Assn.* v. *Blaisdell*, 290 U. S. 398 (1934), which upheld, in the face of a challenge based on the Contract Clause, emergency state legislation enacted to cope with the extraordinary economic depression existing in 1934. The retroactive application of Louisiana Act 315 serves no such paramount state interest. Cf. *City of El Paso* v. *Simmons*, 379 U. S. 497 (1965).

SUPREME COURT OF THE UNITED STATES

No. 71-1459

United States, Petitioner, v. Little Lake Misere Land Company, Inc., et al. | On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.

[June 18, 1973]*

MR. JUSTICE REHNQUIST, concurring in the result.

I agree with my BROTHER STEWART that the central question presented by this case is whether Louisiana has the constitutional power to make Act 315 applicable to this transaction, and not whether a judicially created rule of decision, labeled federal common law, should displace state law. The Migratory Bird Conservation Act does not establish a federal rule controlling the rights of the United States under the reservation. Whether Congress could enact such a provision is a question not now before us. In *Clearfield Trust Co.* v. *United States*, 318 U. S. 363, 366 (1943), this Court held that federal common law governed the rights and duties of the United States "on commercial paper which it issues. . . ." The interest in having those rights governed by a rule which is uniform across the Nation was the basis of that decision. But the interest of the Federal Government in having real property acquisitions that it makes in the States pursuant to a particular federal program governed by a similarly uniform rule is too tenuous to invoke the *Clearfield* principle, especially in light of the consistent statements by this Court that state law governs real property transactions.

What for my BROTHER STEWART, however, is a "textbook example" of a violation of the Obligation of Con-

tracts Clause, is for me something more difficult. The scope of this clause has been restricted by past decisions of the Court such as *Home Building & Loan Ass'n* v. *Blaisdell,* 290 U. S. 398 (1934), in which a Minnesota statute extending the period of time in which the mortgagor might redeem his equity following foreclosure was upheld in the face of vigorous arguments that the statute impaired a valid contract. Were there no simpler ground for disposing of the case, it would be necessary to resolve this very debatable question.

I believe that such another ground is present here, in view of the fact that Act 315 enacted by Louisiana by its terms applies only to transactions in which "the United States of America, or any of its subdivisions or agencies" is a party. While it is argued that Louisiana by other legislation made the same principle applicable to the state government, this proposition is, as the Court's opinion points out, by no means demonstrated. And in any event the change in the period of prescriptibility was not made applicable to nongovernmental grantees.

Implicit in the holdings of a number of our cases dealing with state taxation and regulatory measures applied to the Federal Government is that such measures must be nondiscriminatory. See, *e. g., James* v. *Dravo Contracting Co.,* 302 U. S. 134 (1937); *New York* v. *United States,* 326 U. S. 572 (1946); *Reconstruction Finance Corporation* v. *Beaver County,* 328 U. S. 204, 210 (1946).

The doctrine of intergovernmental immunity enunciated in *McCulloch* v. *Maryland,* 4 Wheat. 316 (1819), however it may have evolved since that decision, requires at least that the United States be immune from discriminatory treatment by a State which in some manner interferes with the execution of federal laws. If the State of Pennsylvania could not impose a nondiscrimi-

natory property tax on property owned by the United States, *United States* v. *Allegheny County*, 322 U. S. 174 (1944), *a fortiori*, the State of Louisiana may not enforce Act 315 against the property of the United States involved in this case. I therefore concur in the judgment of the Court.